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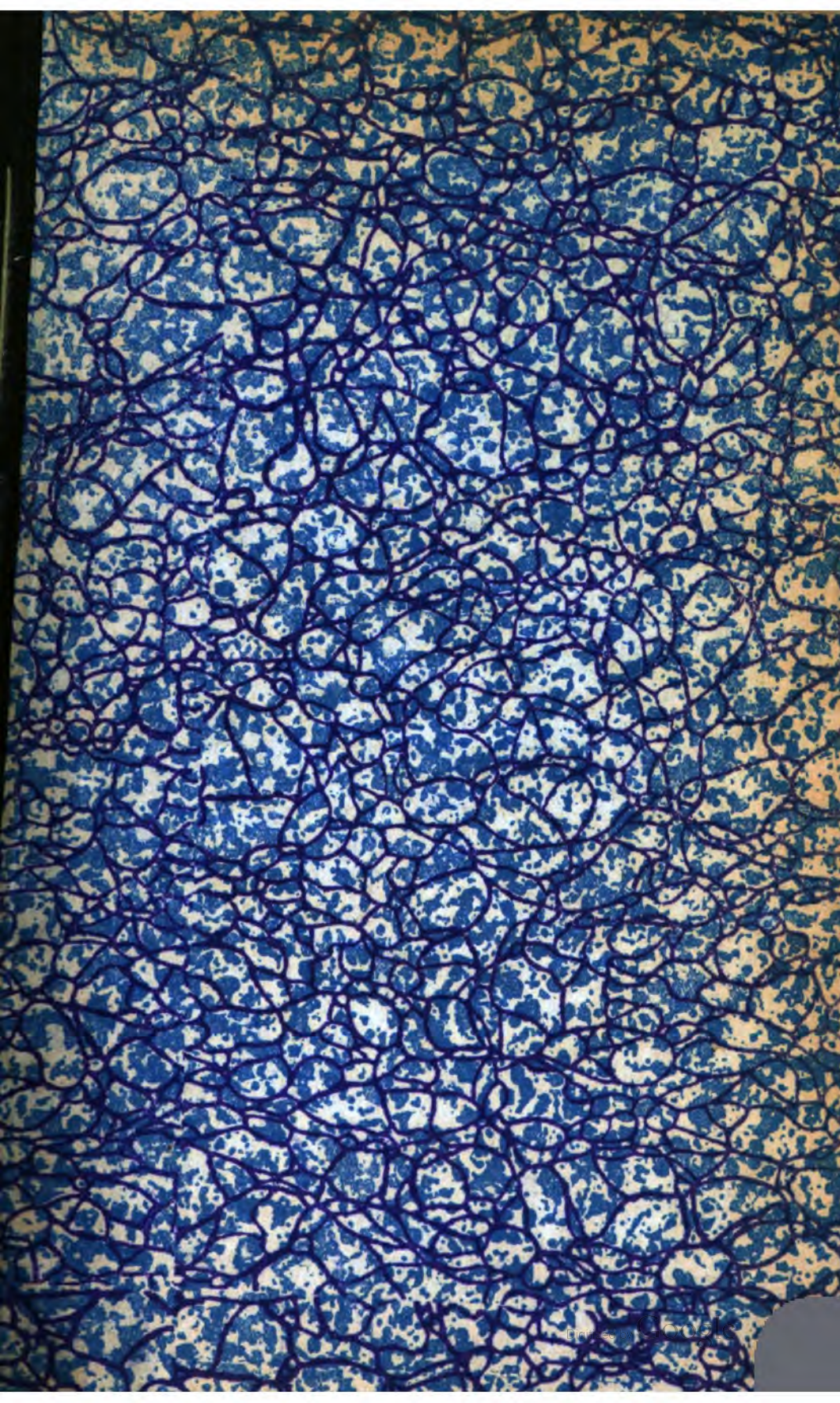
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Desai Narotam

THE INDIAN COURT FEES ACT,

No. VII. of 1870,

AS AMENDED BY SUBSEQUENT ACTS,

WITH

NOTES OF DECIDED CASES FROM THE VARIOUS LAW REPORTS, CIRCULARS,
ORDERS, LETTERS, RULES, RESOLUTIONS, NOTIFICATIONS, &c., ISSUED BY
THE GOVERNMENT OF INDIA AS WELL AS THE LOCAL GOVERNMENTS
AND BOARDS OF REVENUE UNDER THE COURT FEES ACT, EXTRA-
CTS FROM THE PROCEEDINGS OF THE LEGISLATIVE COUNCIL,
AND APPENDICES CONTAINING THE SUITS VALUATION
ACT VII. OF 1887, NOTIFICATIONS, &c., UNDER THE
VARIOUS SECTIONS OF THE COURT FEES ACT,
REDUCTIONS AND REMISSIONS OF DUTY,
SCHEDULE OF FEES UNDER THE
REPEALED ACT XXVI. OF 1867,
QUESTIONS AND ANSWERS
ON THE COURT FEES
ACT AND AN
INDEX.

BY

DESAI NAROTAM,

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PREFACE.

THIS is intended as a companion volume to the "Indian Stamp Laws" published by this Compiler in May last. All the Amendments of the Act from 1870 to the passing of Act XI. of 1899 have been duly incorporated in the Act, and the cases have been brought down to September, 1899.

The Appendices contain (a) The Suits Valuation Act VII. of 1887, with notes of cases, (b) Notifications, Rules, Resolutions, &c., passed by the Government of India and the Bombay Government under the various sections of the Court Fees Act, (c) Reductions and Remissions of duty under the Court Fees Act, (d) Schedule of fees under the repealed Act XXVI. of 1867, and (e) Questions and Answers on Court-fees for the use of students.

140, BAPU KHOTE STREET,
Bombay, September, 1899.

D. N.

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ERRATA ET ADDENDA.

- Page 10, col. 2, line 35, after '410' add 's. c., W. N., 1898, p. 95.'
- " 12, col. 2, line 14, after '64' add 's. c., W. N., 1886, p. 800.'
- " " 2, line 31, after '419' add 's. c. W. N., 1896, p. 121.'
- " " 2, line 52, after '326' add 's. c., W. N., 1891, p. 67.'
- " 33, col. 2, lines 27 and 28 from bottom, for '4 Agra 5' read '3 Agra 5.'
- " 36, col. 2, line 3 from bottom, for '4 Agra 5' read '3 Agra 5.'
- " 37, s. 9, line 1, for 'net' read 'nett.'
- " 42, s. 12, col. 1, line 2, for 'catagory' read 'category.'
- " 43, col. 2, lines 5, 12 and 18, for 'catagory' read 'category.'
- " 44, col. 1, line 18 from bottom, for '72' read '12,' and add 's. c., 15 W. R. 451.'
- " " " line 23 from bottom, after '11' add 's. c., 14 W. R. 381.'
- " 51, col. 2, line 19 from bottom, after '85' add 's. c., 8 B. L. R., P. C., 27.'
- " 65, top line, for 'ss. 19 F—22' read 'ss. 19 K—22.'
- " 77, Art. 5, at the end of col. 2, add '*Application for review in a suit in forma pauperis*—See *Umda Bibi v. Naima Bibi* (20 All. 410; s. c., W. N., 1898, p. 95), *ante*, p. 10.'
- " 96, strike out the dash at the bottom.
- " 99, col. 1, line 14, after 'Court Fees Act' add '—*Srinivasa v. Venkata* (11 Mad. 148).'
- " 101, top line, for 'sch. II.' read 'Sch. III.'

Page 7, Section 6.

Appeal under the Agency Rules against the decision of the Governor's Agent.—An appeal preferred to his Excellency the Governor in Council under Rule No. 22 of the Agency Rules framed under Act XXIV. of 1899 against the decision of the Governor's Agent at Vizagapatam and referred by the Government to the High Court for disposal is not chargeable under the Court Fees Act.—*Reference under Court Fees Act, s. 5* (22 Mad. 162).

Page 10, Section 6.

Application for leave to appeal in forma pauperis.—*Rejection.*—*Appeal.*—*Held*, that no appeal will lie from an order rejecting an application for leave to appeal in forma pauperis. *Baldeo v. Gula Kuar* (9 All. 129) and *Lekha v. Bhauma* (18 All. 101) referred to,—

The Secretary of State for India in Council v. Jillo (21 All. 133, F. B.).

Page 11, Section 6.

Application for leave to appeal as pauper.—*Rejection.*—*Subsequent appeal on full stamp.*—

Limitation.—Where, an application for leave to appeal in forma pauperis having been presented and rejected, a regular appeal was subsequently filed, but after the period of limitation had expired, *held*, that the payment of the Court-fee on the regular appeal could not be held to relate back to the memorandum of appeal which accompanied the application for leave to appeal as a pauper so as to convert that memorandum of appeal into an appeal within time. Until the regular appeal was filed there was nothing before the Court which it could treat, even provisionally, as a memorandum of appeal.—*Bishnath Prasad v. Jagannath Prasad* (W. N., 1891, p. 99).

Application for leave to sue as pauper.—*Rejection.*—*Suit on full stamp.*—*Limitation.*—

When an application for leave to sue as a pauper is refused and the applicant subsequently brings a suit in the same matter on a full Court-fee, such suit dates, for the purposes of limitation, from the time of filing the plaint and not from the date of the application for leave to sue as a pauper. *Aliter* when leave to sue as pauper having been granted, the applicant is dispaupered.—*Naraini Kuar v. Makhan Lal* (17 All. 526; s. c., W. N., 1895, p. 106).

Application for leave to sue as pauper.—

Subsequent payment of Court-fee.—*Limitation.*—A. B. applied for leave to sue as a pauper for the recovery of certain dower alleged to be due to her. Upon her right to sue as a pauper being disputed by persons proposed by her in her application for leave to sue as a pauper as defendants to the suit, A. B. paid into Court the Court-fee necessary for a regular suit to recover the amount claimed, and prayed that her original application might be treated as plaint in the suit and the suit proceeded with in the ordinary manner. In the meantime, however, the period of limitation prescribed by Art. 104 of Sch. II. of Act XV. of 1877 for a suit to recover deferred dower had expired. *Held*, that the suit was barred by limitation and that s. 5 of Act XV. of 1877 could not be applied. *Skinner v. Orde* (2 All. 241; s. c., 4 O. L. R. 351) distinguished. *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129), *Jainti Prasad v. Bachu Singh* (15 All. 65), and *Naraini Kuar v. Makhan Lal* (17 All. 526) referred to.—*Abbasi Begam v. Nanki Begam* (18 All. 206; s. c., W. N., 1896, p. 88).

Page 22, Section 7 IV. (c).

Mistake in framing of suit.—Evasion of Stamp Laws.—Procedure.—The plaintiff framed his suit for injunction, when he ought in reality to have sued for declaration of title and possession. The Lower Court, thereupon dismissed his suit on the ground that the suit was manifestly brought in defeat of the Stamp Laws. *Held*, that the Lower Court ought not to have dismissed the suit and that the procedure to be followed in cases like the present was to order the plaintiff to add the proper prayer and to pay the additional Court-fees within a reasonable time.—*Balaram bin Mayaram v. Mahadu bin Ramji* (The Bombay Law Reporter, Vol. I., p. 40).

Page 43, Section 12.

Question of valuation.—Category.—An appeal lies against a decision of the lower Court as to the class under which a suit falls, though it does not lie against its valuation in that class. A decision of the lower Court holding that a suit is one for specific performance of a contract of sale and to be valued according to the amount of the consideration money [s. 7, cl X. (a)] and not for a declaratory decree with consequential relief [s. 7, cl. IV. (c)] is appealable.—*Dada Bhaui Kitar v. Nagesh Rumchandra* (P. J., 1898, p. 346; s. c., 23 Bom. 486).

Page 48, Section 12.

Court's discretion as to costs.—A Judge is not bound to give costs at a certain valuation.—*Khoda Buksh v. Mowla Buksh* (14 W. R. 255).

Page 72, Section 31.

S. 31.—*Order for payment to complainant out of the fine.*—*Appellate Court directing the accused to pay a further sum to complainant.*—An Assistant Magistrate having convicted the accused persons sentenced them to pay a fine, out of which Rs. 2 was to be paid to the complainant for his expenses; the Deputy Magistrate on appeal having confirmed the conviction, passed an order under Court Fees Act, s. 31, directing the accused to pay a further sum to the complainant. *Held*, that the order was illegal and should be set aside.—*Queen-Empress v. Tangavelu Chetti* (22 Mad. 153).

Page 93, Sch. II., Art. 11.

S. 5.—Sch. II., Art. 11.—*Held*, that in an appeal under s. 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s. 562 of the Code of Civil Procedure, the proper fee is Rs. 2.—*Balli Rai v. Mahabir Rai* (21 All. 178).

Page 99, Sch. II., Art. 17 (vi).

Sch. II., Art. 17 (VI).—*Suit under s. 539 of the Civil Pro. Code.*—The mere fact that the

plaintiff in a suit under s. 539 of the Code of Civil Procedure may ask for an account to be taken from the trustees and that the trustees may be compelled to refund moneys alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17 cl. VI. of the second Schedule to the Court Fees Act, 1870, and render the plaintiffs liable to pay an *ad valorem* Court-fee on that part of the plaint. *Thakuri v. Brahma Narain* (19 All. 60) referred to.—*Girdhari Lal v. Ram Lal* (21 All. 200).

Page 100, Sch. III.

Court-Fees Amendment Act XI. of 1899.—*The form of affidavit does not apply to Administrator-General.*—The Administrator-General as a public officer is exempted from verifying otherwise than by his signature any petition presented by him under the provisions of Act II. of 1874 (Administrator-General's Act). In the *Goods of McComiskey* (20 Cal. 379) followed. The form of affidavit prescribed by Act XI. of 1899 indicates that it does not apply to an application by the Administrator-General.—*In the Goods of P. J. Awdall* (26 Cal. 404).

Page 110.

Administration suit.—Valuation for jurisdiction.—An administration suit was brought in the Second Class Subordinate Judge's Court, the claim being valued at Rs. 130. The Court finding that the estate was worth over a lakh of Rupees and the liabilities came to 5,729 rupees, and that there was due to the estate by defendant No. I., the appellant, a sum of Rs. 15,199, drew up a sort of preliminary decree, one of the orders in which was that the defendant should pay this amount into Court within two weeks. The District Court returned the appeal filed before it for presentation to the High Court, holding that the subject-matter exceeded Rs. 5,000. *Held*, that the appeal lay to the District Court. Ss. 8 and 26 of the Bombay Civil Courts Act (XIV. of 1869) referred to.—*Sheth Kavaji Mancherji v. Dinshaji Mancherji* (P. J., 1897, p. 351).

Page 114.

Partition suit.—Valuation for jurisdiction.—Plaintiff sued in a Second Class Subordinate Judge's Court for partition and possession of his one anna share (which did not exceed Rs. 5,000) in a village of the value of over Rs. 5,000. Some of the defendants also asked for partition of their shares. *Held*, in second appeal, that the Subordinate Judge was competent to entertain the suit and that the fact that some of the defendants asked for partition (even if the prayer was granted) did not deprive that Court of jurisdiction, though the value of the whole estate was in excess of Rs. 5,000. *Motibhai v. Haridas* (22 Bom. 316) followed.—*Vishnu Ganesh Nimkar v. Nilkanth Jagannath* (P. J., 1898, p. 185).

LIST OF ABBREVIATIONS.

A. ...	...	...	...	Answer.
A. C.	...	...	...	Appellate Civil Jurisdiction.
A. Cr.	...	...	...	Appellate Criminal Jurisdiction.
Agra	...	...	...	Agra High Court Reports.
All...	...	...	...	Indian Law Reports, Allahabad Series.
Art. or Arts.	...	...	...	Article or Articles.
B. G. G.	...	...	...	Bombay Government Gazette.
B. G. Notn.	...	...	...	" " Notification.
B. G. Resolution...	...	...	...	" " Resolution.
B. L. R.	...	...	...	Bengal Law Reports.
Bom.	...	...	...	Indian Law Reports, Bombay Series.
Bom. Cr. Rul.	...	...	...	Criminal Rulings of the Bombay High Court.
Bom. H. C.	...	...	...	Bombay High Court Reports.
C. J.	...	...	...	Chief Justice.
C. B. R.	...	...	...	Calcutta Law Reports.
C. P.	...	...	...	Central Provinces.
C. P. Stamp Manual	...	...	...	" " Stamp Manual, Edn., 1896.
Cal...	...	...	...	Indian Law Reports, Calcutta Series.
Cal. H. C., G. L.	...	...	...	Calcutta High Court, General Letter.
Chap.	...	...	...	Chapter.
Cir	...	...	...	Circular.
Cir. O.	...	...	...	" Order.
Cl. or Cls.	...	...	...	Clause or Clauses.
Col. or Cols.	...	...	...	Column or Columns.
Commr. or Commrs.	...	...	...	Commissioner or Commissioners.
Edn.	...	...	...	Edition.
F. B.	...	...	...	Full Bench.
F. D.	...	...	...	Foreign Department.
Fin. Commr.	...	...	...	Financial Commissioner.
Fin. and Com. Dept.	...	...	...	Finance and Commerce Department.
G.-G.	...	...	...	Governor-General.
G. L.	...	...	...	General Letter.
G. O.	...	...	...	Government Order.
G. R.	...	...	...	Bombay Government Resolution.
H. D.	...	...	...	Home Department.
Hay.	...	...	...	Hay's Reports.
I. G.	...	...	...	Gazette of India.
I. G. Letter	...	...	...	India Government Letter.
I. G. Notn.	...	...	...	" " Notification.
I. G. Resolution	...	...	...	" " Resolution.
Imp.	...	...	...	Imperatrix.
Ind. Jur.	...	...	...	Indian Jurist.
J. D.	...	...	...	Judicial Department.
J. or JJ.	...	...	...	Justice or Justices.
Jud. Commr.	...	...	...	Judicial Commissioner.
L. R.	...	...	...	Law Reports, or Legal Remembrancer.
L. R., I. A.	...	...	...	" " Indian Appeals.
Leg. Rem.	...	...	...	Legal Remembrancer.

Mad.	...	...	...	Indian Law Reports, Madras Series.
Mad. H. C.	...	...	...	Madras High Court Reports.
Marsh.	...	...	...	Marshall's Reports.
Moore's I. A.	...	...	...	Moore's Indian Appeals.
Mt.	...	...	...	Musammât.
N. S.	...	...	...	New Series.
N.-W. P.	...	...	...	North-Western Provinces High Court Reports.
Notn. or Notns.	...	...	...	Notification or Notifications.
O. C.	...	...	...	Original Civil Jurisdiction.
O. S.	...	...	...	Old Series.
P. or pp.	...	...	...	Page or pages.
P. C.	...	...	...	Privy Council.
P. D.	...	...	...	Political Department.
P. J.	...	...	...	Printed Judgments of the Bombay High Court.
Pt. or Pts.	...	...	...	Part or Parts.
Punj.	...	...	...	Punjab.
Punj. Rec.	...	...	...	Punjab Record.
Q.	...	...	...	Question.
R. or Rev.	...	...	...	Revenue.
R. D.	...	...	...	Revenue Department.
Reg. or Regs.	...	...	...	Regulation or Regulations.
S. or Ss.	...	...	...	Section or Sections.
S. C.	...	...	...	Same Case.
S. R.	...	...	...	Separate Revenue.
Sch.	...	...	...	Schedule.
Supdt.	...	...	...	Superintendent.
Suth. P. C.	...	...	...	Sutherland's Privy Council Judgments.
Vol.	...	...	...	Volume.
W. N.	...	...	...	Weekly Notes of the Allahabad High Court.
W. R.	...	...	...	Sutherland's Weekly Reporter, Civil Rulings.
" Cr. Rul.	...	...	" " "	Criminal Rulings.
" S. C. C.	...	...	" " "	Small Cause Court References.
" Act X.	" " "	Act X. Rulings.
" Misc.	" " "	Miscellaneous Appeals.
" S. N.	" " "	Special Number (Jan. to July 1864).

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THE
INDIAN COURT FEES ACT,
NO. VII. OF 1870.*

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE
11TH MARCH 1870.)

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Court Fees Act, 1870:"

Extent of Act. It extends to the whole of British India :

Commencement of Act. And it shall come into force on the first day of April 1870.

British India.—

"British India shall mean all the territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India."—*The General Clauses Act (X. of 1897), s. 3 (7).*

Application of the Act.—

This Act applies only to judicial stamps, i. e., to fees to be paid by persons, having business in Courts of Justice and Government offices, as distinguished from non-judicial stamps, i. e., fiscal duties leviable on the record of certain private transactions, which are governed by Act I. of 1879.—*C. P. Stamp Manual, 1893, p. 1, para. 1.—Punj. Stamp Manual, 1888, p. 67, para. 98.*

See also notes under s. 6, post.

Military Court of Requests.—It is proposed to exempt suits instituted in a Military Court of Requests from the payment of any fee. The constitution of such Courts is peculiar; they form no part of the regular machinery employed in the general administration of justice; the present measure, therefore, is inapplicable to them. Moreover, the suitor in such Courts is placed at this disadvantage as compared with suitors in the ordinary

Civil Courts, that although he may gain his case, he is unable to recover the costs which he has incurred in prosecuting his claim; hence the incidence of the taxation imposed by the levy of an Institution Fee in such cases is inequitable.—*Statement of Objects and Reasons (I. G., Oct. 1869).*

Extension of the Act.—

Act VII. of 1870 has been declared in force in Upper Burma generally (except the Shan States) by Act XX. of 1886, s. 6 (Burma Code, Edn. 1889, p. 864); in British Baluchistan by Reg. I. of 1890, s. 3 (Baluchistan Code, Edn. 1890, p. 69); and in the Sonthal pergunnahs by Reg. III. of 1872 as amended by Reg. III. of 1886, s. 6 (Bengal Code, Vol. I, Edn. 1889, p. 605).

The Act has been declared in force, under the Scheduled Districts Act, 1874, in the following Scheduled Districts, namely:—the District of Hazaribagh (I. G., 22nd Oct. 1881, Pt. I., p. 507); the District of Lohardugga (Ibid., p. 508); the Districts of Manbhoom (Ibid., p. 509); the Pergunnah Dhalbhoom in the District of Singbhoom (Ibid., p. 510); and the North-Western Provinces Tarai (I. G., 23rd Sept. 1876, Pt. I., p. 505).

It has been declared inapplicable to proceedings before officers making a settlement and in certain other cases under the Sonthal

* As amended by Acts XIV. of 1870, XVI. of 1870, XX. of 1870, VIII. of 1871, XV. of 1872, XIII. of 1875, XVIII. of 1884, XVII. of 1887, VI. of 1889, VII. of 1889, XI. of 1889, XIII. of 1889, VIII. of 1890 and XII. of 1891,

Pergunnahs Settlement Regulation; see Reg. III. of 1872, s. 8 (Bengal Code, Vol. I., Edn. 1889, p. 600).

It has been declared to be in force in Upper Burma by Act XIII. of 1898 (Upper Burma Laws Act, repealing Act XX. of 1886), s. 4 [1] and Sch. I.

The Act came into permanent operation in Aden on the 1st April 1876 (B.G.G., 1876, Pt. I., p. 956).

Cessation of operation.—

It has ceased to be in force in the Dibrugarh Frontier Tract and the Mikri Hills Tract (Assam Frontier). (Assam Gazette, 1884, Pt. II., pp. 212 and 705, respectively).

It has been declared by Notification under the Scheduled Districts Act, 1874, not to be in force in the following Scheduled Districts, namely:—The Garo Hills District, the Khashi and Jaintia Hills District, and the Naga Hills District (I. G., 26th April 1884, Pt. I., p. 164).

Object of the Act.—Early Acts and Regulations.—

The object of the Court Fees Act is to lay down rules for the collection of one form of taxation. It tends to discourage litigious complaints, and to recruit the revenue.

Before the passing of Act XXXVI. of 1860, the law of Court Fees in India was governed by various Regulations in the different Presidencies.

Bengal.—Institution fees were first levied in Bengal by Beng. Reg. XXXVIII. of 1795, on suits or appeals filed in Civil Courts. Under this Regulation fees were not collected by stamps, but they were all paid in cash. Stamps were first introduced in 1797 by Beng. Reg. VI. of 1797, which repealed the former Act and extended to Bengal, Behar, Orissa and Benares. The object of this Regulation was to abolish the tax for maintenance of police establishments leviable on native merchants and traders; to impose the stamp-duties with a view to compensate for the deficiency in the public revenue occasioned by the abolition of the police tax; and to amend the law relating to Court-fees with a view to discourage litigious complaints and further recruit the revenue. Court-fee was levied on complaints for petty offences, by Beng. Reg. X. of 1797, and on petitions for review by Beng. Reg. II. of 1798. No institution fee was levied (under Beng. Reg. V. of 1798) on summary suits or appeals for the recovery of possession or rent of land. Beng. Reg. VII. of 1800, provided for the custody and supply of stamps. These were followed by Beng. Regs. XIII. of 1810, I. of 1814, XXVI. of 1814, IV. of 1816, XV. of 1816, XIV. of 1824 and II. of 1825.

All these Regulations were revised and re-enacted, and consolidated into one Reg. X. of 1829 which repealed all the existing Regulations on the subject, and introduced a new Schedule of fees. Under Beng. Reg. VIII.

of 1831, summary suits for arrears or execution of rent were made liable to one-fourth the duty required for regular suits.

By Act XV. of 1845 all complaints in original suits by Native Officers or soldiers on the military establishment of the Presidency of Fort William, Fort St. George, or Bombay, not being suits originating in loans, or in pecuniary transactions of a commercial nature, were exempted from Court-fee.

Bombay.—The early Regulations on Court-fees in Bombay were Bom. Regs. VIII. of 1802, XIV. of 1815, VII. of 1816 and IV. of 1817, which were all rescinded in the year 1827 by Reg. I. of that year, s. 1, and replaced by Bom. Reg. XVIII. of 1827. Under s. 15 of this Regulation, all original complaints, ordinary petitions of appeal, and petitions for special appeal against any decree in any Civil Court were required to be written on stamped paper. But no stamp was required on original complaints for a sum or value not exceeding 100 rupees. Under s. 16 the Court was authorized to impose certain penalties in case the plaint or appeal was insufficiently stamped. Under s. 18 every answer, reply, rejoinder, every razeenama and vakalatnama, every application for summoning and examining witnesses, or filing exhibits, or for the revision of a decree, for a special appeal, and generally every application in any suit, appeal or judicial proceeding (not being of a criminal nature) was required to be written on stamped paper of the proper value. But these documents were exempted from Court-fee in original suits, if the sum sued for did not exceed 100 rupees. Under s. 19, every sunnud, every certificate of heirship, executorship, or administratorship, and every certificate granted by a kaze in his official capacity was to bear a stamp of the proper value. Under s. 20, copies of decrees of any Judicial Court, except that of a Commissioner, and of official papers requiring authentication (except those required for public record) were to bear the proper stamp. The exemptions referred to in ss. 15 and 18 of this Regulation, in cases where the subject matter did not exceed 100 rupees in original suits, were rescinded by Bom. Reg. III. of 1828, which provided that complaints and other papers in such suits should be subject to the same duty as was prescribed for appeals of the same amount. The exemption in s. 20 of Reg. XVIII. of 1827 in favour of decrees by the Court of a Commissioner was rescinded by Bombay Reg. III. of 1831, which declared such decrees to be liable to the fee prescribed for other decrees. Reg. XVIII. of 1827 and other Regulations relating to stamps were extended to the Bombay Territories in the Dekkhan and Khandesh, including Sholapoor, by Bom. Reg. IV. of 1828. By Bom. Reg. VI. of 1828, suits cognizable before Collectors under the operation of Chapter VIII. of Reg. XVII. of 1827, were made subject to the same rules in regard to stamps as were in force for the Courts of Civil Judicature. Bom. Reg. XII. of 1830 provided for the valuation of land paying revenue to Government, and of Enam and

other rent-free lands, in civil actions. Beng. Reg. XV. of 1816 (s. 3) which exempted from duty mukhtarnamas granted by Native Officers and soldiers to institute and conduct suits on their behalf, was extended to the Bombay Presidency by Act XV. of 1845. Under the last mentioned Act all plaints in original suits by Native Officers or soldiers, not being suits originating in loans or in pecuniary transactions of a commercial nature were exempt from Court-fee.

Madras.—In Madras the Court-fee Law was governed by Mad. Rega. III. of 1802, IV. of 1808, V. of 1808, VIII. of 1808, XVII. of 1808, II. of 1818, XIII. of 1816, II. of 1817 and VI. of 1817.

Act XXXVI. of 1860.—Act XXXVI. of 1860, which came into force on the 1st October 1860, repealed all the previous Regulations on Stamps and Court-fees in force in the three Presidencies, and extended to the whole of British India. Under s. 18 of the Act, the Governor-General in Council was empowered, by order published in the Calcutta Gazette, to lower rates of duty in any District or altogether exempt the same, and to cancel or vary such order. S. 19 empowered the Local Governments to appoint officers for collection of revenue, and to appoint licensed stamp-vendors. Ss. 20 to 30 prescribed rules for the guidance of licensed stamp-vendors, and punishment for the breach of such rules. Under Sch. B to this Act, the following documents were chargeable with Court-fee:—Bail or Security Bonds; Copies of judgments and decrees, and of revenue or judicial proceedings; Mukhtarnamas, vakalatnamas and other powers; Petitions of appeal not being from an order rejecting a plaint, or from a decree or order having by any law the force of a decree; Petitions or applications presented to any Civil, Criminal, or Revenue Court; Petitions or applications presented to the Nizamut Adawlut, to the Board of Revenue, or Customs, Salt, or Opium, in Bengal; Petitions of plaints or appeals instituted in any Civil Court not within the local limits of the jurisdiction of the Courts established by Royal Charter; Petitions of plaints in suits instituted in the Court of Collectors under Act X. of 1859; Razeenamahs, Ruffahnamahs, Soolehnamahs or the like. Suits

cognizable before Collectors under the operation of Chapter VIII. of Bom. Reg. XVII. of 1827, as modified by Act XVI. of 1838, were subject to the same rules in regard to stamps as were in force for the Courts of Civil Judicature.

Acts X. of 1862, XI. of 1863, and X. of 1865.—Act XXXVI. of 1860 was repealed by Act X. of 1862, which came into force on the 1st June 1862. In addition to the documents mentioned in the last para. the following documents were made liable to duty:—Applications presented to the Collector of Customs at any Presidency Towns, and applications presented to the Municipal Commissioners or to any Magistrate or Justice of the Peace under Act XIV. of 1856 (for the conservancy and improvement of the towns of Calcutta, Madras and Bombay); Certificates granted under Act XXVII. of 1860; Copies of translation of a Judgment; Copies of any deed, instrument or writing stamped under Schedule A. to the Act; Petitions of appeal to the Board of Revenue or other Chief Controlling Revenue Authority; Probate or letters of administration. Act XI. of 1863 provided for the employment and remuneration of peons for the service and execution of civil processes. Act X. of 1865 provided for the stamp-duty on Petition for probate or letters of administration; Probate or letters of administration; Caveat; Citation; Inventory; Administration-bond, and petitions other than those mentioned above.

Acts XVIII. of 1865 and XXVI. of 1867.—So much of Act X. of 1862 as related to judicial stamps was for the most part superseded by Acts XVIII. of 1865 (which came into force on the 10th April 1865) and XXVI. of 1867 (which came into force on the 22nd March 1867), which substituted a new Schedule for Schedule B of Act X. of 1862. The Schedule of duties under Act XXVI. of 1867 is fully given in Appendix D to this book.

Act VII. of 1870.—Act XXVI. of 1867 was repealed by the present Court Fees Act VII. of 1870. Under the previous Act XXVI. of 1867, the law relating to Court-fees was separated from the law relating to stamp-duties proper, and this arrangement has been adopted in the present Act to avoid confusion.

Repeal of enactments.

2. [Repealed by Act XIV. of 1870.]

S. 2 ran as follows:—"On and after that day, the enactments mentioned in the first part of the third Schedule hereto annexed shall be wholly repealed, and the enactments

mentioned in the second part of the same Schedule shall be repealed to the extent specified therein."

CHAPTER II.

FEES IN THE HIGH COURTS AND THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

3. Fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Court established by Letters Patent, by virtue of the powers conferred by Statute twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, section fifteen,

or chargeable in each of such Courts under number eleven of the first, and numbers seven, twelve, fourteen,* twenty and twenty-one of the second, Schedule to this Act annexed ;

and the fees for the time being chargeable in the Court of Small Causes as the Presidency-town† and their several offices,

shall be collected in the manner hereinafter appearing.

4. No document of any of the kinds specified in the first or second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;

or in the exercise of its extraordinary original criminal jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from judgment of two or more Judges of the said Court, or of a Division Court ;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;

or in the exercise of its jurisdiction as a Court of reference or revision ;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

Application of the section.—

This section does not apply to the High Court in the exercise of its ordinary original civil and criminal jurisdiction. Neither does it apply to the High Court in the exercise of its Admiralty and Ecclesiastical jurisdiction.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F.B.; s.c., W.N., 1890, p. 39).

Document.—Shall be filed, &c.—

Memorandum of appeal.—A memorandum of appeal is a document included in the first and second Schedules to the Court Fees Act (VII. of 1870), and is a document within the meaning of ss. 4, 25, 28 and 30 of the Act, and therefore cannot be filed or recorded in or received by the High Court unless and until

* Here the word "sixteen" coming after the word "fourteen" is omitted, having been repealed by Act XII. of 1891, first Schedule.

† See the Presidency Small Cause Courts Act (XV. of 1882), Chapter X.

the proper Court-fee in respect of it is paid, and is of no validity unless and until it is properly stamped. Consequently, if it is not, when tendered, properly stamped, it is not, at that time a memorandum of appeal within the meaning of s. 541 of the Code of Civil Procedure (XIV. of 1882), and the appeal cannot be regarded as having been at that time presented within the meaning of s. 4 of the Limitation Act (XV.

of 1877), or as valid for any other purpose, except in the events specified in s. 28 of the Court Fees Act (VII. of 1870).—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F.B.; s. c., W. N., 1890, p. 39).

See notes under s. 28, *post*.

Furnished.—

See notes under s. 6, *post*.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be the taxing-officer within the meaning of first paragraph of this section.

Final.—

Meaning.—The word “final” in s. 5 of the Court Fees Act has the same meaning as in s. 12, though it is applied to a different subject. In s. 5 it is applied to a decision as to the necessity of paying a fee or the amount thereof, whereas in s. 12 it is applied to a decision as to every question relating to valuation for the purpose of determining the amount of any fee chargeable under the chapter on a plaint or memorandum of appeal. The cases in which it has been held that, notwithstanding the use of this word in s. 12, an appeal lies from a decision as to the category in which the relief sought by a plaintiff or appellant falls, do not mean that decisions which the section declares to be final are nevertheless appealable, but that the question of category is not a question relating to valuation, and therefore is not declared by the section to be final. In both s. 5 and s. 12, final is used in its ordinary legal sense of unappealable. A decision under s. 5 of the Act is not open to appeal, revision, or review, and is final for all purposes, and no means have been provided or suggested by the Legislature for questioning it.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

Finality of taxing-officer's decision.—Where an appellant whose memorandum of appeal had been declared by the taxing-officer of the Court to be insufficiently stamped, applied for relief under s. 3 of Act VI. of 1892 (by which a new section 582 A, has been added to the Code of Civil Procedure; see notes under s. 28, *post*), and it was found that the report of the taxing-officer was erroneous, and that the correct stamp had, as a matter of fact, been put on the memorandum of appeal, held, that the appellant was entitled to the relief sought, notwithstanding the provisions of s. 5 of Act VII. of 1870.—*Badri Prasad v. Kundan Lal* (15 All. 117; s. c., W. N., 1893 p. 45).

See also notes under s. 12, *post*.

Officer.—

Not bound to give advice.—The officer mentioned in s. 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped, before presentation.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

Objection taken at the hearing.—

An objection taken on behalf of respondents at the hearing of an appeal as to the amount of Court-fee stamps affixed to the petition of appeal to the High Court, cannot be entertained. The mode in which any question as to the amount of any fee payable in the High

Court should be determined, is prescribed in Chapter II. of the Court Fees Act (s. 5).In the present case there was no reference to the Chief Justice.....The taxing officer's decision cannot be questioned by the respondent's *vakil*.—*Ranga Pai v. Baba* (20 Mad. 398).

CHAPTER III.**FEES IN OTHER COURTS AND IN PUBLIC OFFICES.****6. Except in the Courts hereinbefore mentioned, no document of any**

Fees on documents filed,
&c., in Mofussil Courts or
in public offices.

of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

Application of the Act.—

Enactments prospective in operation.—The general rule is that Acts are prospective, and not retrospective in their operation. To this rule there are two exceptions—(a) when Acts are expressly declared to be retrospective, (b) when they only affect the procedure of the Court.—*Javanmal Jitmal v. Muktabai* (14 Bom. 516).

Changes of law relating to procedure have retrospective effect.—*Balkrishna v. Bapu Yesaji* (19 Bom. 204).

Valuation of appeal.—Law in force at the time of presentation.—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under law obsolete at the period of appeal can have no influence on the decision.—*Pro.*, Nov. 15, 1870 (5 Mad. H. C., Ap., 44).

Act XXVI. of 1867 (Stamp Act) s. 6.—Objection by way of cross-appeal.—*Notice.*—An objection by way of cross-appeal will not be entertained except on payment of the stamp-duty required by this section, though a petition setting out the grounds of such appeal on a stamp of Rs. 2 had been filed before the passing of that Act.—*G. L. Fagan v. Chunder Kant Banerjee* (7 W. R. 452).

Where notice of an objection to be taken by a respondent under s. 348 of Act VIII. of 1859 at the hearing of the appeal was given before Act XXVI. of 1867 came into force, but the objection was taken after that Act came into force, held, that the objection could not be taken without payment of the proper stamp-duty prescribed by cl. 9, Art. 11, Sch. B of Act XXVI. of 1867.—*Sreenath Roy Chowdhry, Petitioner* (7 W. R. 462).

Though a notice of cross-appeal may be lodged with the Registrar of High Court previously, the cross-appeal itself must, under s. 348 of Act VIII. of 1859 (Civil Procedure), be taken at the hearing of the appeal, and must bear the stamp required by s. 6 of Act XXVI. of 1867.—*Laleet Singh v. Mirza Ali Raza* (8 W. R. 352).

Act XXVI. of 1867.—Appeal returned before, but filed after, the passing.—Where owing to an irregularity, a petition of appeal was returned before the new Stamp Act XXVI. of 1867 came into force, and the appeal was not filed until after that Act came into force, held, that the appeal must be filed on a stamp of the amount prescribed by the new law.—*Aradhun Dey v. Gholam Hossein Maloom* (7 W. R. 461).

Act VII. of 1870.—Where a decree had been prepared while the old stamp laws were in operation, and six rupees were awarded in it as the value of the stamps for a copy thereof, the Court allowed a copy to be taken for rupees four by a party applying after Act VII. of 1870 came into operation.—*Hurreehur Mahatoon, Petitioner* (14 W. R. 167).

Act VII. of 1870.—Stamp-duty upon an appeal filed after the Court Fees Act came into operation, can only be levied according to the provisions of that Act, even though the original suit was valued on the principles laid down in Act XXVI. of 1867.—*Mt. Bhugobutty Koor v. Mt. Kustoor Koor* (15 W. R. 272).

Amended plaint.—The proper valuation in the case of an amended plaint is that ascertained at the date of the amendment, and not at the date of original filing of the plaint.—*Moro Vishwanath v. Ganesh Vithal* (10 Bom. H. C., A. C., 444).

Optional applications.—Applications not required to be in writing.—

Applications to the Court, not required by the Civil Procedure Code to be in writing, do not fall within the 6th section of the Court Fees Act. The term application in Sch. II. of the Court Fees Act, when read with s. 6, must be construed to mean an application in writing.—*Telley v. Administrator-General of Bengal* (2 N. W. P. 418).

Application for a certificate of sale.—An application by an auction-purchaser for a certificate of sale need bear no stamp, since by s. 316 of the Civil Procedure Code (XIV. of 1882), it is not even required to be in writing.—*Hira Ambaidas v. Tekchand Ambaidas* (13 Bom. 670).

The application for refund of stamp-duty need not be made in writing, and may be made by a Mookhtiar duly authorized.—*Bhiwo Mulla v. Rash Monee Dosses* (9 W. R. 357).

See also notes under Sch. II., Art. 1, *post*.

Telegraphic messages.—Telegraphic messages should be regarded as oral communications, and applications made by telegraph are not to be considered as a rule liable to stamp-duty under Act VII. of 1870.—*Beng. Stamp Manual*, 1890, p. 118, *para.* 7.

Filed, exhibited, recorded, received or furnished.—

Certificate of guardianship.—S. 6 of the Court Fees Act (VII. of 1870), which says that a certificate under Act XI. of 1858 (among other documents) "shall not be filed, exhibited, or recorded in any Court of Justice, or received or furnished by any public officer," unless a certain fee be paid, means that such certificate cannot come into existence until the person, who has the permission of the Court to obtain it, deposits the requisite amount of stamp-duty.—*Sahai Nand v. Mugniram Marwari* (12 Cal. 542).

Plaint not bearing the proper stamp.—A suit is not instituted within the meaning of the explanation to s. 4 of the Limitation Act, by the presentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper, that does not bear the proper Court-fee.—*Venkatramayya v. Krishnayya* (20 Mad. 319).

Succession Certificate.—A certificate under the Succession Certificate Act XXVII. of 1860 (repealed by Act VII. of 1889) should be issued directly it is granted, provided the proper stamp prescribed for such certificate be furnished. The word "furnished" in the Court Fees Act refers to the time when the Court determines to grant a certificate under this Act (XXVII. of 1860), and when it is drawn up ready to be issued to the party applying for it.—*Dhunpat Singh Dogar v. The Government* (17 W. R. 489).

Section 6 of Act VII. of 1870 enacts that no document of the kinds specified in Sch. I. (which provides for fees leviable *ad valorem*) or in Sch. II. (which provides for fees of fixed

amount, irrespective of the value of the claim) of that Act, shall be *filed, exhibited, or recorded* in any Court of Justice, or shall be *received or furnished* by any Public Officer unless it be stamped to the amount indicated in the Schedule as the proper fee. On the other hand, (save as may be provided in the rules made under chapter IV. of the Act or process fees, or in any express enactment) no document which is not mentioned in either of the Schedules requires a Judicial stamp. Furthermore, ss. 19 and 19 C, expressly *exempt* certain documents which might otherwise be considered chargeable under the Act. Again by virtue of the power given in s. 35, the Governor-General in Council has remitted fee payable on a number of documents.—*C. P. Stamp Manual*, 1893, p. 36, *paras.* 1 and 2.—*Punj. Stamp Manual*, 1888, p. 67, *para.* 99.

See notes under Sch. I., Art. 12, *post*.

Native Chiefs not exempt from Stamp Laws.—

Whenever a Chief, Talukdar, or any person of rank invokes the authority of a British Officer, especially on account of property situated, or transactions effected, in British territory, he must do so, subject in every respect to the laws and regulations applicable to British subjects. When an application made to British Courts or officers is such, that a particular form, stamp, or procedure is required by law, the functionary is not at liberty to dispense with, and thus to proclaim himself superior to, the law. So also on the part of the applicant, his application implies for the purpose in hand a submission to the law, and to the system of law with its accessories which he invokes, and he cannot as an applicant or suitor demand terms differing from those prescribed by law.—*B. G. Resolution*, No. 2740, 17th April 1888, P. D.

Re-institution of suit when proceedings have been stayed.—

"Where the Court under s. 20 (where all the defendants do not reside within its jurisdiction) stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any Court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court."—*The Code of Civil Procedures* (XIV. of 1882), s. 21.

Date of original filing to be the date of suit.—The date of a suit must be taken to be that on which the plaint was originally filed, and not that on which it was filed in another Court either as an amended plaint or as a plaint returned to be filed in that Court.—*Khallat Chunder Ghose v. Nasseebunnissa* (16 W. R. 47).

Appeal.—Cross-objections.—

Cross-objections cannot be heard until the fee is paid.—Plaintiff brought a suit for an account in which a decree was passed, awarding

him Rs. 1,17,490-1-6. The defendant having filed an appeal against awarding of this sum to the plaintiff, the latter filed a memo. of cross-objections under s. 561 of the Civil Procedure Code, and objected to the decree in so far as it did not award to him certain sums of money aggregating to Rs. 83,751-5-6 which he had claimed. *Held*, that no Court-fees payable on a notice of objections under s. 561 which is filed by presenting the memo. of objection in the usual manner, but that the objections will not be heard until the fee in respect of them is paid and that the plaintiff must be ready to pay it at the hearing of the appeal.—*Fatma Begum v. Mir Zulfikaralikhan* (P. J., 1887, p. 278).

“Proper fee” for a document.—

It is to be observed that while s. 6 of the Court Fees Act requires a document to be *fully* stamped before it is received or issued, it says nothing about the attention that is to be paid to the other requirements of the Act and of the rules framed under it, with respect to a document being *properly* stamped. S. 28, first clause, indeed, says that no document which ought to bear a Court-fee stamp shall be of any validity unless and until it is *properly* stamped; but these words do not, on the face of them, prohibit the *receiving or issuing* of such a document. The first words of the second clause of s. 28, however, show that it was the intention of the Legislature, that a document should not be received in any Court or office unless it was *properly* stamped. The officer, whose duty it is to cancel the stamp on a document presented to him, must, therefore, not only satisfy himself of the correctness of the *amount* of the fee paid, but he must see that the *description and number* of the stamp or stamps used, is in accordance with the Act, and with the rules framed under it.—*C. P. Stamp Manual*, 1893, pp. 40-1, para. 16.

All fees chargeable under the Court Fees Act are collected by means of stamps (s. 25). S. 28 lays down that no document which ought to bear a stamp under the Act shall be of any validity unless and until it is “*properly*” stamped. That is to say, it must be stamped in accordance with the provisions of the Act, and of the rules made under it. These provisions deal with—(1) the *amount* of the Court-fee (s. 26); (2) the *description* of stamp to be used (s. 26); (3) the *number* of stamps to be used (s. 27 [b]).

The amount of the fee.—Ss. 6, 7, 8, 17, 19 D and 20 of the Court Fees Act deal with the amount of fee payable on documents chargeable under the Act. In cases of doubt, the officer to whom the document is to be presented, can be consulted; but he is not bound to

give any opinion till the document is formally presented. There is no provision in the Court Fees Act for the obtaining of a formal adjudication of duty.* If the fees payable on any document filed in a Court or office have been *under-estimated*, the deficiency can be made good and does not involve any penalty (ss. 9 to 12 and 16). S. 10 provides for the refund by the Court of excess fees in certain cases, if the value of the claim has been *over-estimated*; but ordinarily such refunds are not obtainable.

Description of stamp.—By the rules† made by the Governor-General in Council under ss. 26 and 35 of the Court Fees Act, 1870, the duty payable under the Court Fees Act is to be denoted—(1) if the value is less than Rs. 10, by adhesive stamps bearing the words “Court Fees”; (2) if the value is Rs. 10 or more, by impressed stamps bearing the words “Court Fees”;‡ adhesive stamps being only employed to make up fractions of Rs. 10.

—*C. P. Stamp Manual*, 1893, pp. 36-7, paras. 3, 4 and 5.

Number of stamps.—For rules under s. 27 (b) of the Court Fees Act as to the number of stamps to be used, see Appendix B, *post*.

Deficiency how to be made up.—If a document written on an impressed stamp is returned by the Court or office to which it was presented, because the fee denoted by the stamp is insufficient—or if a Court acting under s. 10, 11, 16 or 28 of the Act calls upon the party who presented a document written on an impressed sheet, to make good a deficiency in the fee thereby denoted—the defect cannot be remedied by affixing adhesive stamps, unless the deficiency is less than Rs. 10, or unless the case falls under s. 19 E of the Court-Fees Act.§ If the deficiency amounts to or exceeds Rs. 10, then the requirements of the rules under s. 27 (b) above-mentioned make it necessary that the document should be *re-written on a fresh stamp of full value*. In such a case a refund of the value of the impressed stamp originally used will be claimable (s. 27 [c]).—*C. P. Stamp Manual*, 1893, pp. 37-8, para. 8.

Time of stamping.—

The general rule is that a document chargeable with Court-fees must be stamped *before it is presented or issued by a public officer*. It must, therefore, be *fully* stamped. S. 28 of the Court Fees Act, however, enacts that if a document is through mistake or inadvertence received, filed, or used in any Court or office, without being properly stamped, the presiding Judge or Head of the office, as the case may be, may, if he thinks fit, order that such document be stamped as he may direct;

* The Indian Stamp Act I. of 1879 contains provisions (ss. 30-2) for the adjudication of duty leviable under that Act.

† See Appendix B, *post*.

‡ The impressed sheets and adhesive labels under Act I. of 1879 cannot be employed to denote payment of Court-fees.

§ See I. G. Notn., No. 1522, 20th March 1885, under Appendix B, *post*.

and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Similarly by the provisions of ss. 10, 11, 12, and 16 of the Act, deficiencies in the amount of Court-fee may be made good after the document on which the fee is due has been filed in Court. These cases, it will be noted, are of a special and exceptional kind.

An exception of a different nature is made by s. 410 of the Code of Civil Procedure, which allows the payment of Court-fees on petitions presented by the plaintiff in pauper suits to be waived till the suit is determined or the plaintiff is depauperised.

S. 18¹ requires the statement of a complainant (who has not already presented a stamped petition) which is reduced into writing under the provisions of the Criminal Procedure Code to be stamped at the time when it is written down by the Magistrate.

The stamps for process-fees are to be affixed to the application for issue of process or to the complaint, before the application or complaint is presented to the Court.

—*C. P. Stamp Manual*, 1893, p. 38, para. 10.

There is no illegality in the reception of a plaint engrossed on insufficient stamp-paper, if the full amount of the stamp-duty has been paid at the time.—*Gobind Kumar Chowdhry v. Hargopal Nag* (3 B. L. R., Ap., 72).

Government not exempt from payment of duty.—

There is no exemption in favour of Government in the Court Fees Act, similar to that contained in Art. 18, Sch. II., of the Stamp Act I. of 1879, and accordingly all petitions and applications of any kind presented by or on behalf of Government in the course of Civil Judicial Proceedings are liable and require to be stamped in the same manner as if presented by a private person.—*Opinion of Officiating Gov.-Adv., Punj., dated October 1891.*
—*Punj. Stamp Manual*, 1838, p. 100, para. 142.

Omission to stamp.—

The omitting or neglecting to stamp a document which is chargeable with fees under Act VII. of 1870 is not (save as provided in Chap. III. A of the Act, regarding probates and letters of administration) in itself an offence, as such omission or neglect would be under the Indian Stamp Act of 1879. The only consequence would be that the document would not be received in any Court or office (unless its admission, under s. 33, were necessary in order to prevent a failure of justice).—*C. P. Stamp Manual*, 1893, p. 40, para. 12.—*Punj. Stamp Manual*, 1888, p. 68, para. 99.

Duty of examining the stamps.—

The duty of examining the stamps on documents presented to Courts and offices is emphasized by the direction in s. 30 that "no document, requiring a stamp under the Act, shall be filed or acted upon in any proceeding

in any Court or office until the stamp has been cancelled. The question hereupon arises, who is the officer whose duty it is to determine the sufficiency of the stamp on documents chargeable under the Court Fees Act, which are presented to a Court or officer? S. 28 of the Act gives the Judge of the Court or the Head of the office (as the case may be) power to revise a mistaken appraisal of the correct fee payable on a document filed; and the wording of the second clause of s. 30 implies that the person appointed by the Judge or the Head of the office to cancel stamps on documents filed, is also charged with the first scrutiny of the stamps and the determination of their sufficiency. Plaints and petitions presented in District Offices are to be submitted to the Clerk of the Court in the first instance; and it is the business of this officer to see that they are on a proper stamp. If the stamp is defective, the deficiency will be pointed out to the petitioner; and if the latter does not withdraw the document with a view to rectification of the stamp, the defect will be noted on the plaint or petition by the Clerk of the Court before transmission to the proper officer empowered to dispose of it. By s. 54 of the Code of Civil Procedure, the Court itself is to pass an order in respect to an insufficiently stamped plaint, requiring it to be properly stamped within a fixed time, under penalty of rejection; so that in the case of *plaints*, at all events, the stamp should not be cancelled until after the transmission of the document to the Court empowered to dispose of it, otherwise, cancellation might precede the ascertaining of the sufficiency of the stamp instead of following it.—*C. P. Stamp Manual*, 1893, p. 40, paras. 12 to 15.

Examination of the stamp-paper.—On a question whether further examination of the stamp-paper by the Collector was necessary, that stamp having been already examined by the Registrar of the High Court, *held*, that it was not desirable that the Registrar of the High Court should undertake the duty of, or be responsible for, the examination of stamps; it appeared a fiscal duty more properly belonging to a Revenue Officer of Government, and that consequently the stamp-paper should, if necessary, be forwarded to the Collector for examination.—*Bhikoo Motta v. Rash Monee Dossee* (9 W. R. 357).

Debtor under arrest applying for discharge.—Fee for swearing and examination by whom to be paid.—

The following case was referred to the Chief Justice, under s. 5 of the Court Fees Act, by the Taxing Officer of the Court: "The defendant having been arrested in execution of the decree obtained against him in this suit, applied for his discharge under ss. 280 and 281 of Act VIII. of 1859 (Civil Procedure). On being brought before the Court, he was examined by the plaintiff, and his examination was reduced into writing in conformity with the usual practice in such cases. It is submitted on behalf of the plaintiff, that the fee allowed by the table of fees

for swearing a witness, and reducing his deposition into writing, is not payable when a defendant is examined under s. 281, or, if payable, is not payable by the plaintiff. The question I am asked to refer is whether any fee is payable for reducing into writing the examination of a defendant examined under s. 281, and if so, by whom the same is payable?" The opinion of the officiating Chief Justice (Norman, J.) was as follows: "I think that when the plaintiff, in order to make the proof referred to in s. 281, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under s. 8 of Act XXIII. of 1861 (Civil Procedure) in which case the fee is apparently demandable, if at all, from the applicant."—*J. M. Edmond v. M. Nierses* (8 B. L. R., Ap., 42; s. c., 16 W. R. 84).

Suits or proceedings by paupers.—

"If the application (of a pauper) be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V., except that the plaintiff shall not be liable to any Court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit."—*The Code of Civil Procedure* (XIV. of 1882), s. 410.

"If the plaintiff succeed in the suit, the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code."—*Ibid.*, s. 411.

"If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 92, co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper."—*Ibid.*, s. 412.

Defence in forma pauperis.—A defendant may be allowed to defend a suit *in forma pauperis*, although there is no provision to that effect in the Code of Civil Procedure.—*Doorga Churn Dass v. Nitto Kally Dassee* (5 Cal. 819; s. c., 6 C. L. R. 120).

Pauper respondent.—A pauper respondent is not entitled to present objection at the trial of an appeal without payment of stamp-duty.—*Babaji Hari v. Rajaram Ballal* (1 Bom. 75).

Followed in *Narayan v. Krishna* (8 Mad. 214).

Objections by a respondent to a decree under s. 561 of the Code of Civil Procedure cannot be filed *in forma pauperis*. *Babaji Hari*

v. Rajaram Ballal (1 Bom. 75) followed.—*Narayan v. Krishna* (8 Mad. 214).

Pauper respondent.—Note (c) to Art. 11, Sch. B, Act XXVI. of 1867 (corresponding to the present section) contains no reservation as to the stamp-duty to be levied on a petition of objection, under s. 348, Act VIII. of 1859 (Civil Procedure), filed by a pauper respondent; such petition of objection will be received, but will not be heard till the stamp-duty is paid. The question, however, will have to be raised at the hearing.—*Rashmonee Dossee v. Chowdhry Junmojoy Mulick* (9 W. R. 356).

Respondent cross-appealing in forma pauperis.—A plaintiff who has obtained leave to sue *in forma pauperis*, and has been successful in obtaining a decree for a portion of his claim, but has failed as to the other portion, is not entitled on an appeal by the defendant, to be heard *in forma pauperis* on cross-appeal as to the portion of his claim decided against him in the lower Court.—*In the matter of Brojeshwari Dasi v. Guroo Churn* (11 Cal. 735).

Application for review by a pauper.—*Held*, that when an application for review is presented in a suit *in forma pauperis*, that application, like the plaint in the suit, is not liable to any Court-fee. The presentation of such an application is a "proceeding connected with the suit," such as is contemplated by s. 510 of the Code of Civil Procedure.—*Umda Bibi v. Naima Bibi* (20 All. 410).

Decree for less than the amount claimed.—*Costs.*—A pauper sued his sister for the partition of property valued at a large sum. The plaintiff obtained a decree for Rs. 100. *Held*, that the defendant was liable to pay Court-fees only on the sum decreed.—*Chand-rareka v. Secretary of State for India* (14 Mad. 163).

Joint application by several paupers.—The mere fact that several persons jointly present an application for permission to sue as pauper does not authorize the Court to entertain it on behalf of applicants who do not appear in person.—*Burgess v. Sidden* (10 Mad. 198).

Withdrawal of suit by pauper.—*Power of Collector to recover Court-fees.*—The plaintiff, after having filed his suit *in forma pauperis*, came to an amicable arrangement with the defendants, and asked the Court that the suit should be dismissed. The Court granted this application but made no order as to the payment of Court-fees. Thereupon the Collector applied to the High Court, under s. 622 of the Code of Civil Procedure (XIV. of 1882), to direct the lower Court to make an order for the payment of Court-fees under s. 412 of the Code. *Held*, that the Collector, though not a party to the suit, was entitled to move the High Court under s. 622 of the Code. *Held*, also, that s. 412 had no application to the present case as there was no adjudication of the rights of the parties, and the plaintiff could not therefore, be said to have

failed in the suit. The Subordinate Judge had, therefore, no jurisdiction to make the order desired by the Collector. S. 412 of the Code applies only to cases of adjudicated failure, and to the other cases specified, as where the plaintiff has been dispaupered, or where the suit has been dismissed under s. 97 or 98.—*Collector of Kanara v. Krishnappa Hedge* (15 Bom. 77).

Application for leave to sue as pauper.—Rejection of application.—Payment of fees after period of limitation.—On the 2nd February 1890, the plaintiffs applied for leave to sue *in forma pauperis*. After investigation the Court, on the 15th July 1890, refused leave, but on the plaintiffs' application granted him time to pay the Court-fees. He paid the fees on the 12th August 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred and dismissed it. *Held*, confirming the decree, that the plaintiffs' application to sue as a pauper having been disposed of under s. 409 of the Civil Procedure Code (XIV. of 1882), there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of an application for leave to sue as a pauper, the only course open to the applicant is that declared in s. 413, *viz.*, to institute a suit and the date of the institution of that suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV. of 1877) would have no application.—*Keshav Ramchandra v. Krishnarao* (20 Bom. 508).

Where an application for permission to sue *in forma pauperis* is rejected and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition to sue as a pauper. S. 4 of the Limitation Act does not apply to such a case. The plaintiff on the 26th November 1890 applied for leave to sue *in forma pauperis* for the recovery of immoveable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November 1878. *Held*, that the suit was instituted not when the petition to sue as pauper was presented but only on the payment of the full Court-fee, and it was, therefore, barred by lapse of time. *Keshab Ramchandra v. Krishnarao* (20 Bom. 501), *Narain Kuar v. Makhan Lal* (17 All. 526) and *Abbasi Begam v. Nahnai Begam* (18 All. 206) followed. *Skinner v. Orde* (2 All. 241) distinguished.—*Aubhoya Churn Dey Roy v. Bissesswari* (24 Cal. 889).

See *Wilayat Ali Khan v. Umarkdaraz Ali Khan* (19 All. 166), under s. 12, *post*.

But see the following two cases:—

Pauper suit.—Payment pending inquiry.—Limitation.—Where after a petition for leave to sue *in forma pauperis* has been filed, and pending proceedings taken to inquire into the pauperism, the petitioner obtains funds which enable him to pay the Court-fees and pays the necessary amount of stamp-fees into Court, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date he filed his pauper petition, and limitation runs against him only up to that time.—*Stuart Skinner alias Navab Mirza v. William Orde* (2 All. 241, P. C.; s. c., L. R., 6 I. A. 216; s. c., 4 C. L. R. 331).

Reversing the decision of the High Court in *Skinner v. Orde* (1 All. 230).

Pauper appeal.—Dismissal.—Appellant furnishing Court-fee after limitation.—The plaintiff sued for an account. On 19th April the suit was dismissed. On 1st June following he presented a memorandum of appeal unstamped and an application to be allowed to appeal *in forma pauperis*, the application being in time on account of the intervention of the vacation. The District Judge presumably not seeing any reason to reject the appeal under s. 592 of the Civil Procedure Code directed the Subordinate Judge to enquire into the pauperism. The appellant valued his claim in appeal at Rs. 2,500 instead of Rs. 230 as in the original Court. Acting on the result of the enquiry the District Judge, on the 20th December, refused the application, holding that the appeal could be prosecuted with advantage on the lower valuation of the fee on which the appellant was able to pay. On 5th January following the appellant applied to amend the memorandum of appeal by reducing the value, and for time to pay the Court-fee, and the Court allowed him a week for the purpose. This was done and the appeal was accepted on 7th January. The District Judge did not record whether the appeal was admitted under s. 5 of the Limitation Act on his being satisfied that the plaintiff had sufficient cause for not presenting it within the period of limitation prescribed therefor or whether he treated the appeal as having been presented within time though unstamped (when he permitted it to be stamped) as if it had been stamped when originally presented. *Held*, that the appeal was not time barred. *Per Farran, C.J.*—The practice of the original side of the High Court in point and the action of the District Judge were correct and not inconsistent with any of the provisions of the Civil Procedure Code, and are strictly and analogous to the procedure laid down in the amending s. 582 A of the enactment, without considering the appeal as having been admitted by view under s. 5 of the Limitation Act. This view is, I think, supported by the ruling of the Madras High Court in *Patcha Sahrb v. Sub-Collector of North Arcot* (15 Mad. 78) which was based upon the principle of *Skinner v. Orde* (L. R., 6 I. A. 126)

This principle was also applied in *Moti Sahu v. Chhattri Das* (19 Cal. 780). *Per* Candy, J.—The appeal was within time if it be taken that in effect the District Judge excused the delay under s. 5 of the Limitation Act and so allowed the appeal to be instituted beyond time, there being under the circumstances of the case, in the absence of fraud, sufficient cause for delay.—*Bai Ful, widow of Dansang Navalsang v. Desai Manorbhai Bhawanidas* (P. J., 1897, p. 321).

Decree in favour of pauper.—Cross-claim under the decree.—Recovery of Court-fee by Government.—*Held*, that a Collector applying on behalf of Government, under s. 411 of the Civil Procedure Code, for recovery of Court-fees by attachment of a sum of money payable under a decree to a plaintiff suing *in forma pauperis*, might be deemed to have been a party to the suit in which the decree was passed within the meaning of s. 244 (c) of the Code, and that an appeal would therefore lie from an order granting such application. A plaintiff suing *in forma pauperis* to recover property valued at Rs. 60,000 obtained a decree for Rs. 1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code directed that the plaintiff should pay Rs. 1,196 as the amount of Court-fee which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the Rs. 1,439 payable to the plaintiff, the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree, and (ii) a sum of money payable to her by the plaintiff under a decree which she had obtained in a cross-suit in the same Court, should be set off against the Rs. 1,439 payable by her to him with reference to ss. 246 and 247 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his Rs. 1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's application it was contended that the "subject-matter of the suit" in s. 411 of the Code meant the sum which the successful pauper plaintiff is entitled to get as a result of his success in the suit; but that in the suit and the cross-suit taken together, the plaintiff ultimately stood to lose a small sum, the defendant being the holder of the larger sum awarded altogether. *Held*, that the contention had no force, as execution had not been taken out by the plaintiff or the defendant or both, and it could not be said that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour of Rs. 1,439, so as to bring into operation the special rules of ss. 246 and 247 of the Code between him and the defendant. *Held*, also, that the plaintiff was one who, in the sense of s. 411, had succeeded in respect of the part of the "subject-matter" of his suit, and on that part therefore a first charge was by law reserved and secured to the Government, which

was justified in recovering it in these proceedings from the defendant, who was ordered by the decree to pay it in the same way as costs are ordinarily recoverable under the Code. *Held*, that the decrees in the suit and cross-suit not having reached a stage in which the provisions of ss. 246 and 247 of the Code would come into play, no question of set off and consequent reduction or other modification of the "subject-matter" of the suit decreed against the defendant as payable by her to the plaintiff had arisen or could be entertained.—*Janki v. The Collector of Allahabad* (9 All. 64).

Court-fee payable out of the subject-matter of the suit.—Mode of realization by Government.—In a suit brought *in forma pauperis* the plaintiff was successful and the decree directed that the Court-fee which would have been payable, had the suit not been *in forma pauperis*, should be the first charge on the property the subject-matter of the suit, and should be recoverable from the defendant in the same manner as the costs of the suit. *Held*, that it was not necessary for Government to bring a separate suit to recover the Court-fee, but that the same might be realized from the property the subject of the suit by proceedings in execution.—*Ram Das v. The Secretary of State for India in Council* (18 All. 419).

Right of Government to appeal in respect of Court-fee on portion of plaintiff's claim dismissed.—In a suit *in forma pauperis* the District Judge decreed the plaintiff's claim in part, and dismissed it in part, but omitted to make any provision for payment to Government of the Court-fee on the portion which was dismissed. The Secretary of State not having been a party to the litigation in the Court below, then preferred an appeal in respect of the Court-fee on that portion of the plaintiff's claim which had been dismissed. *Held*, that such an appeal would lie, though the more suitable procedure would have been for the Government to have applied through the Collector to the Court of first instance to review its judgment, and to repair the omission in its decree. *Janki v. The Collector of Allahabad* (9 All. 64) referred to.—*Secretary of State for India in Council v. Bhagwanti Bibi* (13 All. 326).

But see *In the Matter of the petition of the Secretary of State for India in Council* (2 C.L.R. 461), in which it was *held*, in an application by Government to have the decree amended in that respect, that the application must be refused on the ground that the Government, not being a party to the suit, had no right to be heard in the matter.

Decree cannot be "attached and sold by Collector."—The provisions of s. 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector, inasmuch as that section provides that persons who have been successful as paupers, shall, so far as the "subject-matter" of their success is concerned, be liable to satisfy out of what they recover, the amount

of the fees, which have been for a time, pending the decision of their suit, remitted to them. Ss. 273 and 284 of the Code did not contemplate the sale of a decree for money but they showed in what manner the attachment of decrees should be made available on behalf of the attaching person. *Sultan Koer v. Gulsari Lal* (2 All. 290) and *Tiruvengada Chari v. Yithilinga Pillai* (6 Mad. 418) followed.—*Jobindro Nath Chowdhury v. Dwarka Nath Dey* (20 Cal. 111).

Sale of property for realizing Court-fees erroneously supposed to be due to Government.—An order for sale and a sale under such order are *ultra vires* and nullities when, in fact, there was no jurisdiction in the Court to make the order. *Ram Lal Moitra v. Bama Sundar Dabia* (12 Cal. 307) referred to.—*Balwant Rao v. Muhammad Husain* (15 All. 324).

Recovery of Court-fee.—Prerogative of the Crown.—The Crown has the first claim to the proceeds of a pauper-suit to the extent of the amount of the Court-fee that would have been payable at the institution of the suit, had the plaintiff not been a pauper, and s. 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging the prerogative.—*Ganpat Putaya v. Collector of Kanara* (1 Bom. 7).

Followed in *Gulsari Lal v. Collector of Bareilly* (1 All. 596) and *Collector of Moradabad v. Muhammad Daim Khan* (2 All. 196).

Court-fee.—Crown is entitled to be paid first.—N was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing

that he should pay the costs of the defendant. On the defendant's application certain immoveable property belonging to N was attached in execution of this decree, and was sold. *Held*, that the crown was entitled to be paid first out of the proceeds of such sale the amount of the Court-fees N would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Putaya v. Collector of Kanara* (1 Bom. 7) followed.—*Gulsari Lal v. Collector of Bareilly* (1 All. 596).

Government takes precedence of lien-holders With a view to recover the amount of Court-fees which J would have had to pay had he not been permitted to bring a suit as a pauper, the Government caused certain property belonging to B, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against B, which declared a lien on the property created by a bond. The property was sold in the execution of this decree. *Held*, that the Government was entitled to be paid first out of the proceeds of such sale the amount of Court-fees J would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya v. Collector of Kanara* (1 Bom. 7) applied in this case.—*Collector of Moradabad v. Muhammad Daim Khan* (2 All. 196).

With this section read s. 28, *post*, with notes.

7. The amount of fee* payable under this Act in the suits next

Computation of fees payable in certain suits;

hereinafter mentioned shall be computed as follows:—†

I. In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed;

II. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year;

III. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint;

* For the mode of computing the amount of Court-fees payable on certain applications and appeals under the N.-W. P. Rent Act (XII. of 1881), see s. 95 of that Act, as amended by Act XIV. of 1886, s. 2.

† For valuation of suits for purposes of jurisdiction see the Suits Valuation Act (VII. of 1887), Appendix A, *post*.

IV. In suits—

- (a) for moveable property, where the subject-matter has no market-value, as for instance, in the case of documents relating to title,
 for moveable property of no market-value;
 to enforce a right to share in joint family property;
 for a declaratory decree and consequential relief;
 for an injunction;
 for easements;
 for accounts;
- (b) to enforce the right to share in any property on the ground that it is joint family property,
 (c) to obtain a declaratory decree or order, where consequential relief is prayed,
 (d) to obtain an injunction,
 (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and
 (f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought;*

V. In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—
 ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid,

and such revenue is settled, but not permanently—
 five times the revenue so payable;

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits;

* Here the words "and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted," at the end of the para. have been omitted, having been repealed by Act XII. of 1891, first Schedule.

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood ;

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as abovementioned—the market-value of the land;

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed
 Proviso as to Bombay Presidency; to be—

(1) Where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment ;

(2) Where the land is held on a permanent settlement or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) Where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment so remitted ;

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or a farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

(e) Where the subject-matter is a house or garden—according to the
 for houses and gardens ; market-value of the house or garden ;

VI. In suits to enforce a right of pre-emption—according to the value
 (computed in accordance with paragraph V. of this section) of the land, house or garden in respect of
 to enforce a right of pre-emption; which the right is claimed;

VII. In suits for the interest of an assignee of land-revenue—fifteen
 for interest of assignee of land-revenue; times his nett profits as such for the year next
 before the date of presenting the plaint ;

VIII. In suits to set aside an attachment of land or of an interest in
 to set aside an attachment; land or revenue—according to the amount for
 which the land or interest was attached ;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest ;

to redeem;
IX. In suits against a mortgagee for the recovery of the property mortgaged,
and in suits by a mortgagee to foreclose the mortgage,
to foreclose;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage;

for specific performance; X. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration;

(b) of a contract of mortgage—according to the amount agreed to be secured;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(d) of an award—according to the amount or value of the property in dispute;

between landlord and tenant. XI. In the following suits between landlord and tenant:—

(a) for the delivery by tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Valuation for the purpose of Court-fees and valuation for the purpose of jurisdiction.—

Valuation of suit.—Jurisdiction.—For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII. of 1870.—*Nanhoon Singh v. Tofanee Singh* (12 B. L. R., A. C., 113; s. c., 20 W. R. 33).—*Jeebraj Singh v. Inderjeet Mahtoon* (12 B. L. R., 115, note; s. c., 18 W. R. 109).

Followed in *Kalu v. Vishram* (1 Bom. 543).

The valuation of the matters of litigation for the purpose of determining the jurisdiction of Moonsiffs is to be made in the mode prescribed by s. 11, Reg. VI. of 1816 and Reg. III. of 1833, and not in that prescribed in the Stamp Act.—*Chinnasami Chetty v. Nanjappa-sary; Thiagaraja Mudali v. Ramanuja Charry; Junjla Venkatarayadu v. Junjla Kamammah* (6 Mad. H. C. 151).

Whether a Moonsiff has jurisdiction or not in a suit depends not on the value of the stamp according to the rules of the Court Fees Act, but upon the amount or value of the subject-matter of dispute, i. e., the actual market-

value of what the plaintiff is suing for.—*Chundernath Bhutlatcharjee v. Brindabun Shaha* (25 W. R. 39).

A Subordinate Judge of the Second Class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds Rs. 5,000 in value. The law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim upon which the jurisdiction of a Court depends.—*Bai Mahkor v. Bulakhi Chaku* (1 Bom. 538).

Followed in *Kalu v. Vishram* (1 Bom. 543).

For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII. of 1870. *Nanhoo Singh v. Toofanee Sing* (12 B. L. R. 113), and *Jebray Sing v. Inderjeet Mahtoon* (12 B. L. R. 115, note), and *Bai Mahkor v. Bulakhi Chaku* (1 Bom. 538) followed.—*Kalu bin Bhiwaji v. Vishram Mawaji* (1 Bom. 543).

Court-fees.—Jurisdiction.—When Acts are *in pari materia* they may be treated as forming a Code, and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another. The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore, Court Fees Acts which are fiscal enactments are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction.—*Dayachand v. Hemchand Dharamchand* (4 Bom. 515).

Followed in *Modhusudan Koer v. Rakhal-Chunder Roy* (15 Cal. 104).

Per Bindwood, J.—The rules laid down in the Court Fees Act (VII. of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction.—*Rupchand Khemchand v. Balvant Narayan* (11 Bom. 591).

Followed in *Amrita bin Bapuji v. Naru bin Gopalji* (13 Bom. 489).

The valuation of a suit for the purposes of stamp-duty, and the valuation of the subject-matter of the suit for the purpose of determining jurisdiction of the Court in appeal, are two different things. The value of the suit for the purpose of stamp-duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal, on which depends the jurisdiction of the several grades of civil suits, is the actual value of the property in litigation.—*Aukhil Chunder Sen Roy v. Mohiny Mohun Dass* (5 Cal. 489; s. c., 4 C. L. R. 491).

See s. 4 of the Suits Valuation Act (VII. of 1887), Appendix A, *post*.

For the purpose of jurisdiction the Court should be guided by the value of the property in suit, but the amount of the stamp fees should be governed by a different principle.—*Kirty Churn Mitter v. Aunath Nath Deb* (8 Cal. 757; s. c., 11 C. L. R. 95).

Where a Court is satisfied that the market-value of the subject of a suit or appeal presented to it is of such an amount as to bring the suit or appeal within its jurisdiction, it is bound to receive it. The Court will generally assume that the value of the property in suit is that arrived at by the computation for the purposes of ascertaining the stamp-duty where the Stamp Act prescribes arbitrary principles of calculation; but where it is asserted and shown to the satisfaction of the Court, that the market value is in excess of the amount computed for such purposes, the Court must take notice of such market value. Respondent is at liberty, if he thinks fit, to question, at the hearing of an appeal, the appellant's estimate of the value of the subject of the appeal.—*Mussumat Dhunoo v. Damodar Dass* (2 N.-W. P. 177).

Construction of fiscal enactments.—

Construction in favour of the subject.—Fiscal enactments should, as far as possible, be construed in favour of the subject. *Per Mahmood, J.*—It is a rule of construction that, while in cases of taxation everything must be strictly construed in favour of the subject, in questions of jurisdiction the presumption is in favour of giving jurisdiction to the highest Court.—*Amanat Begam v. Bhajan Lal* (8 All. 438, F. B.; s. c., W. N., 1886, p. 146).

Rule of construction in case of doubt.—The Stamp Act is a Revenue Act, an Act which imposes pecuniary burdens, and the rule of construction in respect of such Acts is that, in case of a doubt, the construction most beneficial to the subject is to be adopted.—*Anonymous Case* (10 Cal. 282).—*Dayachand v. Hemchand Dharamchand* (4 Bom. 515).

Cases of doubt.—Where there is doubt in the matter, a Court is bound to decide in favour of the applicant, as the subject cannot be taxed except by clear and unambiguous language.—*Reference* (9 Mad. 148, F. B.).—*Anonymous Case* (10 Cal. 282).—*Meghji Hansraj v. Ramji Joita* (8 Bom. H. C., O.C., 180).—*Dullabh Shival v. T. C. Hope* (Ibid., A. C., 213).

Weight of custom.—When a particular construction has for some years been put upon a fiscal enactment in favour of the public, and that construction has been generally acted upon and acquiesced in by the Government, a strong presumption arises in favour of that construction; no other construction unfavourable to the public should afterwards be put upon the enactment, except for some very cogent reason indeed.—*Anonymous Case* (10 Cal. 282).

Practice of Court.—*Extraneous considerations.*—A practice which is in contravention

of the law, even if it is the practice of a High Court, cannot justify a Court in construing an Act of the Legislature in a manner contrary to its plain wording. Nor can the principles of construction to be applied to an Act be influenced by extraneous considerations, such as questions of hardship.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B. ; s. c., W. N., 1890, p. 39).

Words not to be construed beyond their strict and literal signification.—If the express words of an Act do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of Law to extend such enactment or to give to the words a meaning beyond their strict and literal signification so as to include any case which may reasonably come within the spirit of the enactment.—*In re The Port Canning Land Company, Ltd.* (16 W. R. 208).

An enactment imposing stamp-duties upon the subject must be strictly construed.—*Girdhar Naqishet v. Ganpat Moroba* (11 Bom. H. C., A. C., 129).—*Empress v. Soddanund Mahant* (8 Cal. 259; s. c., 10 C. L. R. 367).—*Ramchandra v. Narayan* (P. J., No. 122 of 1872).

See also the remarks of Mahmood, J., in *Muhammad Salim v. Nabian Bibi* (8 All. 282), given under a. 10, post.

Clause I.—

Suit for recovery of mortgage-debt.—Interest.—

Interest to be included in valuation.—A suit instituted by the mortgagee against the heir of the original mortgagor to have the mortgage-debt paid by sale, not exclusively of the mortgaged property, but also of all the other property in the hands of such heir liable for the debts of the original mortgagor, is virtually a suit for money and should be valued, not at the principal debt, but the entire amount including interest.—*Kashinath Ballal v. Ganpatrao Amriteshwar Joshi* (18 Bom. 696).

Interest from institution of suit until payment.—In a suit on a mortgage the plaintiff was awarded interest up to the date of the plaint. The plaintiff appealed on certain grounds, one of which was that he was entitled to interest up to the date of payment. The respondent's pleader objected to the raising of the above point unless a Court-fee was paid for the amount claimed under it. *Held*, that no additional stamp is required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under s. 7 of the Court Fees Act (VII. of 1870). *Ramkrishna v. Bhimabai* (15 Bom. 416) followed.—*Vithal Hari Athavle v. Govind Vasudeo Thosar* (17 Bom. 41).

See notes under a. 11, post.

Suit on a mortgage-bond.—

Suit on mortgage-bonds.—Appeal by person in possession of the mortgaged property.—A sued to recover the amount due on two mortgage-bonds of Rs. 2,759-14 annas from the mortgagors personally and by sale of the mortgaged property in the possession of B who had purchased it in an auction sale and obtained a decree. B appealed from this decree valuing the relief sought by him at Rs. 70, the amount for which he had purchased the property and paying Court-fees accordingly. *Held*, that the relief ought to have been valued according to the value of the interest of B in the property.—*Durga Charan Sanayal v. Jamsiji* (W. N., 1882, p. 97).

Suit on a hypothecation-bond.—In a suit upon a hypothecation-bond it was found by the Court of first instance that the bond and the debt secured thereby were binding of the first defendant, but not on the second defendant. The plaintiff preferred a second appeal against the second defendant as sole respondent. *Held*, that the Court-fee payable on the second appeal should be calculated upon the amount of the debt sought to be recovered.—*Ramasami v. Subbasami* (13 Mad. 508).

Appeal for a declaration against property.—Plaintiff sued to recover a certain amount on a mortgage-bond. He got a decree for the amount claimed, but not against the property. He appealed to the High Court for a declaration that the debt should be a charge on the property. *Held*, that the stamp of Rs. 10 was insufficient and that an *ad valorem* Court-fee calculated on the amount of the debt sought to be recovered should be paid, as the suit was one to recover the debt from the property in question.—*Doshi v. Malek* (P. J., 1894, p. 153).

Suit for an account.—Appeal.—

Specific sums claimed in appeal.—Plaintiff brought a suit for an account in which a decree was passed awarding him Rs. 1,17,490-1-6. The defendant having filed an appeal against awarding this sum to the plaintiff, the latter filed a memo. of cross-objections under s. 561 of the Civil Procedure Code, and objected to the decree in so far as it did not award to him certain sums of money aggregating to Rs. 83,751-5-6, which he had claimed. It being contended on his behalf that, as it was an appeal on a question of account, the memo. of cross-objections did not require any stamp, or that he should be allowed to value it at a nominal sum of Rs. 5, and that if the Court made a decree in his favour for any larger amount he would then pay the stamp deficiency under s. 11 of the Court Fees Act. *Held*, that though the suit was one originally for accounts, the account had already been taken and the sum found due awarded to the plaintiff, and the plaintiff by his cross-objections now asked for specific sums not objected to him, and the cross-objections should be valued at the aggregate of those

sums.—Fa'ima Begum v. Mir Zulfikaralikhan (P. J., 1887, p. 278).

Suit for account, or damages in case of default.—

See *Ram Doolal Singh v. Gopal Kristo Singh* (16 W. R. 156), under s. 7, cl. IV. (c), *post*.

Suit for rent.—Question of title.—

Where in a suit for rent no possession is prayed for, the fact that the question as to plaintiff's title incidentally arises and has to be determined by the Court cannot affect the question of Court-fees.—*Upendra v. Manager, Sheshagiri* (P. J., 1893, p. 458).

Suit for mesne-profits.—Question of title.—

In a suit for wasilat, the stamp on the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendant may deny the title of the plaintiff to the land.—*Kadir Buksh v. Wise* (Marsh. 165; s. c., 1 Ind. Jur., O. S., 108; s. c., 1 Hay 370).

Compensation.—

Suit for specific moveable property or compensation.—A, to whom a certificate of administration in respect of the property of a minor had been granted in succession to B, whose certificate had been revoked, sued B, claiming the delivery of specific moveable property of various kinds belonging to the minor, which had been intrusted to B, and B detained, or the value of each kind of property as compensation in case of non-delivery. *Held*, that the suit did not embrace "distinct subjects" within the meaning of s. 17 of the Court Fees Act, 1870, and the Court-fees payable in respect of the plaint in the suit should be computed under cl. I., s. 7 of the Act, according to the total value of the claim.—*Amar Nath v. Thakur Das* (9 All. 181).

Contract of guarantee.—Specific performance.—Compensation.—Where plaintiffs sued for an order that the defendant should specifically perform a contract of guarantee by causing the restoration of a village to plaintiffs, and should do all acts necessary to give them full possession, and in addition to or instead of such injunction, for compensation for breach of the contract, *held*, that the suit was not one for possession of land but for specific performance. It was not included within s. 7, cl. X. and was not provided for; and that, as a suit for compensation, it fell under s. 7, cl. I.—*Chunibhai v. The Secretary of State for India in Council* (P. J., 1890, p. 204).

Compensation for use and occupation.—

See *Chedi Lal v. Kirath Chand* (2 All. 682, F. B.), under s. 11, *post*.

Arrears of maintenance.—

Suits for maintenance should be distinguished from suits for arrears of maintenance; the former are valued at the amount claimed as payable for ten years under cl. II. and the

latter at the amount claimed as arrears, under cl. I. Where the object of the suit is not merely to recover arrears of maintenance already determined, but to obtain a decree fixing the rate of maintenance, it should be valued according to cl. II., and not according to cl. I.—*Punj. Stamp Manual*, 1888, p. 69, para. 102.

Instalment-bond.—Court-fee.—

The stamp on a plaint on an instalment-bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit.—*Sutto Bhama Dosseea v. Jameeruddy Khan* (4 W. R., S. C. O., 12).

Set off.—

See notes under s. 19, cl. (3), *post*.

Clause II.—

Annual allowance.—Suit for declaration or right and injunction.—

See *Sardarsingji v. Ganpatsingji* (17 Bom. 56), under cl. IV. (c), *post*.

Suit for monthly payment.—

Sum payable periodically.—This was a reference to the Court by the Registrar on a question of the Court-fees payable on the memorandum of appeal in this case. The Registrar observed as follows:—"In this first appeal the claim is—(i) to recover arrears of annuity, Rs. 137-8; (ii) that the defendants may be called on to furnish security for the payment of Rs. 27-8 per mensem in future, or that they may be directed to invest the sum of Rs. 8,250, which will yield an annuity of Rs. 380 (i.e., Rs. 27-8 × 12) as interest thereon to be paid to the plaintiff. In the lower Court the plaintiff was charged—(i) on Rs. 137-8, under s. 7 (I), Rs. 10-8; (ii) on Rs. 8,250, *ad valorem*, but under what section is not apparent, Rs. 406. This calculation seems to be clearly wrong. The second part of the prayer is clearly chargeable, under s. 7 (II), on ten times the annuity, which equals Rs. 3,800, the fee being Rs. 190. The memorandum of appeal in this Court has been stamped as follows:—(i) on Rs. 137-8, Rs. 10-8; (ii) on the second part of the prayer, Rs. 10. This is equally wrong." *Held*, that the fee chargeable was as indicated by the Registrar, Rs. 10 for the first prayer and Rs. 190 for the second, total Rs. 200-8. But as the total amount paid by the appellant in the first Court and the High Court amounts to Rs. 437, and that due from him for both the Courts is only Rs. 401, the appeal may be admitted.—*Garya Bai v. Har Kuar Bai* (W. N., 1886, p. 228).

Future profits of land.—

See *Fakirbhai v. Sorabji* (P. J., 1883, p. 205), under cl. IV. (c), *post*.

Claim for future emoluments attached to an office.—

In a suit filed in the Court of a Subordinate Judge, the plaintiff prayed, *inter alia*, for a decree for the payment, annually, of the emoluments (i. e., boiled rice, oil, ghee, &c.) attached to a certain office or their

value at a rate stated in the plaint. This portion of the claim he valued, under cl. II. of s. 7 of the Court Fees Act, at ten times the amount of the value claimed for one year. The value of the claim thus stated exceeded the pecuniary limit of the jurisdiction of the District Munsif. The Subordinate Judge held that this portion of the claim was not actionable, inasmuch as the right to the emoluments was conditional upon services to be rendered, and did not fall under cl. II. of s. 7 of the Court Fees Act, not being a fixed sum payable periodically, and therefore he held that the plaint was improperly valued, that the suit was not within his jurisdiction, and that the plaint should be returned to be presented to the proper Court. *Held*, that this order was right.—*Krishnan v. Ravi Varma* (8 Mad, 384).

Varshasan.—Valuation.—

In a suit for a declaration of right to an annuity (varshasan), it was *held* that the stamp for the petition of special appeal should be regulated by the market-value of the annuity, and that *prima facie* ten times the amount of the annuity may be assumed to be its market-value as enacted for analogous agreements by s. 2, Sch. A, Act X. of 1862.—*Narsinwacharya v. Swami Rayacharya* (5 Bom. H. C., A. C., 55).

For valuation of annuities &c., for the purposes of the General Stamp Act (I. of 1879), see s. 25 of that Act.

Maintenance.—

See notes under the preceding clause.

Clause III.—

Suit for removal of trustee.—Market-value of subject-matter.—

Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance and asked to have her removed from the mutwalliship, and themselves appointed in her place, whereby they would have been entitled to a share in the profits of the wakf, *held*, that the fixed stamp-duty of Rs. 10 required by cl. 3, Art. 17, Sch. II. of Act VII. of 1870, was not sufficient; but the plaint should bear a stamp of a value proportionate to the subject-matter of the suit.—*Delroos Banoo Begum v. Nawab Syud Ashgur Ally Khan* (15 B. L. R., A. C., 167).

Followed in *Omrao Mirza v. M. Jones* (10 Cal. 599).

A brought a suit against B, a trustee and others, to set aside a trust-deed and to recover Rs. 2,50,000, the amount of the trust money, and valued his suit at Rs. 2,50,000, the amount of the trust-money. A obtained a decree. B appealed and sought to affix to his memorandum of appeal a ten-rupee stamp, under Art. 17, cl. 6, of Sch. II. of Act VII. of 1870. *Held*, that the duty payable on the memorandum of appeal was the same as that paid on the plaint in the

suit.—*Mohamed Masik v. Malkai Mukhadrai Uzwa Badshah Mehal Sahiba* (10 Cal. 380).

In a suit for the removal of the defendant from the management of certain trust-funds on the ground of misconduct, the plaintiff stamped his plaint with a Court-fee stamp of Rs. 10, and valued the suit at Rs. 7,000 "for the purpose of jurisdiction." *Held*, that the Rs. 7,000 must be taken, under the circumstances, to be the plaintiff's interest in the subject-matter of the suit, and that the Court-fee must be estimated upon that sum. *Delroos Banoo Begum v. Ashgur Ali Khan* (15 B. L. R. 167) followed. *Prinsep, J.*—It appears to us that the subject-matter in this suit is not the corpus of the trust property, but the right to retain the control over it. Under such circumstances the suit would ordinarily fall within Sch. II., Art. 17, cl. VI. of the Court Fees Act. But in the present matter we have the fact that the plaintiff has valued the subject-matter of suit for the purposes of jurisdiction, as he states, at Rs. 7,000. We regard this value as not being merely for the purpose of jurisdiction, but also as affording a basis for the assessment of Court-fees.—*Omrao Mirza v. M. Jones* (10 Cal. 599).

But it has been held by the Allahabad High Court that a suit under s. 14 of Act XX. of 1863 against the superintendent of a religious endowment for misfeasance is a suit which for the purpose of payment of Court-fees falls within Art. 17, cl. VI. of the second Schedule of Act VII. of 1870. *Delroos Banoo Begum v. Ashgur Ally Khan* (15 B. L. R. 167), *Sonachala v. Manika* (8 Mad. 516), and *Omrao Mirza v. Jones* (10 Cal. 599), referred to.—*Muhammad Siraj-ul-Haq v. Imam-ud-din* (19 All. 104).

See also *Thakuri v. Brahma Narain* (19 All. 60), and other cases under Sch. II., Art. 17, cl. VI., *post*. Also notes under cl. IV. (c) of this section.

Clause IV.—

(a).—

Suit to recover title-deeds.—

A suit to recover title-deeds, although it may involve a question of title, is not a suit to obtain possession of land, or to deal in any way with the land itself within the meaning of s. 12 of the Letters Patent.—*Jagger Nath Doss v. Brij Nath Doss* (4 Cal. 322; s. c., 3 C. L. R. 375).

Suit for possession of mortgage-deed.—

A suit to obtain possession of a mortgage-deed on the ground that the mortgagor had not been paid the sums therein mentioned, is not a suit for the recovery of a document relating to title within the meaning of cl. IV. (a).—*Salig Ram v. Muhammad Fasi-ullah Khan* (Punj. Rec., No. 39 of 1875).

Suit for delivery of bonds.—

Plaintiff sued for delivery of bonds and an injunction to restrain the defendants' suing on the bonds or drawing out the money from the Bank. *Held*, that as the bonds had no market-value, they came under s. 7, cl. 4 (a), and that as regards the injunction the plaintiff was entitled to put his own value on the relief sought.—*Naro v. Ramabai* (P. J., 1894, p. 145).

(b).—**Suit for partition.—**

The stamp on a suit for partition and possession of the plaintiff's share of joint family property, must be an *ad valorem* one on the value of the share.—*Balwant Ganesh v. Nana Chintamon* (18 Bom. 209).

In a suit for partition and possession of the plaintiffs' share, the stamp must be an *ad valorem* one on the value of the share.—*Mahadev v. Laxuman* (P. J., 1892, p. 13).

Suit for partition by person in possession.—see *Kirty Churn Mitter v. Aunath Nath Deb* (8 Cal. 757; s. c., 11 C. L. R. 95), under Sch. II., Art. 17, cl. VI., *post*.

Partition suit.—*Hearing fee.*—The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each case ought to fix the amount of such fee. Generally speaking, the value of the suit is the difference between the value after partition of the plaintiff's share which he requires to be partitioned and the value of the same share not partitioned.—*Kirtee Chunder Mitter v. Aunath Nath Deb* (13 C. L. R. 253).

Alienation by a member.—*Suit by purchaser for partition.*—A member of an undivided Hindu family cannot alienate a specific portion of the family property so as to entitle the purchaser to recover possession thereof in an ejectment suit. The purchaser must proceed by making all the co-parceners of his vendor parties to a suit for a general partition of the family property, and pray that the property sold to him should be allotted to him or such other portion as his vendor might be entitled to.—*Sitaram v. Sitaram* (P. J., 1875, p. 140). The Court-fee on such a suit should be sufficient to cover the value of the property purchased by him, and not to cover the whole value of the share in the family property which may be ascertained to belong to the co-parceners whom he represents.—*Hari Bharthi v. Vilhal* (P. J., 1882, p. 148).

But where the only relief prayed for was partition, a Court-fee stamp of Rs. 10 was held sufficient. See *Mohendro v. Ashutosh* (20 Cal. 762), under Sch. II., Art. 17, cl. III., *post*.

Suit for partition by Mussulmans.—In a suit by Mussulmans for partition of an inheritance, the joint property of the parties, the lower Courts refused to give one of the defendants, though he asked for it, his share, which was

found and admitted to be a third. The first Court refused because the Court-fee paid was only sufficient to cover the plaintiff's one-third share in the property, and the lower appellate Court on the ground that this was not a suit for partition of joint family as known to Hindu Law. The High Court in second appeal holding that in this presidency a suit for partition of an inheritance by Mussulmans is hardly distinguishable from a partition suit by Hindus, and the first Court having declared the property to be the joint property of the parties, the principles of an ordinary administration-suit ought at any rate to be applied to it, awarded the defendant his share to be ascertained and given to him in execution on payment by him of the necessary Court-fees. It is obviously most undesirable that parties should be driven to further litigation to obtain a relief which they are entitled to and ask for at a proper time and which can be given to them in an existing suit.—*Abdul Kadar v. Bapubhai valad Sheikh Imam* (P. J., 1898, p. 135).

Valuation for the purpose of jurisdiction.—

For purposes of jurisdiction, the word "value of the original suit, in s. 21 of Act XII. of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), are in partition suits to be taken to mean the value of the property in suit and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mitter v. Aunath Nath Deb* (8 Cal. 757) followed. The Court Fees Act (VII. of 1870), s. 7, cl. 4 does not contemplate that a plaintiff should assign an arbitrary value to the subject-matter of the suit; and the provisions of the Suits Valuation Act (VII. of 1887), ss. 7, 8 and 11, indicate that this was not the intention of the Legislature.—*Vaidya Nath Adya v. Makhan Lal Adya* (17 Cal. 680).

In a suit for partition of certain property, the value of the whole property sought to be divided was over Rs. 5,000. Plaintiff valued his share at Rs. 250, and paid Court-fees on this amount. The suit was filed in the Court of a Subordinate Judge of the First Class. *Held*, that the value of the subject-matter of the suit could not be held to be more than Rs. 250, so that the suit ought to have been filed in the Court of the Second Class Subordinate Judge. *Parsons, J.*—Under the Court Fees Act, 1870, the amount of fee payable in the suit would be according to the amount at which the relief sought is valued in the plaint (s. 7, cl. IV. [b]). The Suits Valuation Act, 1887, s. 8, provides that for such a suit the value as determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same. Thus it seems clear that the value of the subject-matter of the present suit cannot be held to be more than Rs. 250, so that the suit ought to have been filed in the Court of a Second Class Subordinate Judge. We may add that this decision is consonant with the rulings of this Court in *Lakshman Bhatkar v. Babaji Bhatkar* (8 Bom. 81), *Mahadeva Balwant v. Laxuman Balwant* (P. J., 1892, p. 13), and

Balvant Ganesh v. Nana Chintamon (18 Bom. 209), and of the High Court of Allahabad in *Hikmat Ali v. Wali-un-nissa* (12 All. 506). The Calcutta High Court is apparently of the same opinion (*Boidya Nath Adya v. Makhan Lal Adya*, 17 Cal. 680). It is true that the High Court at Madras has come to a contrary decision (*Vydinath v. Subramanya*, 8 Mad. 235), but the latter decisions (*Ramayya v. Subbarayudu*, 13 Mad. 25, and *Narayanan v. Narayanan*, 15 Mad. 69) seem to embody the more correct principle.—*Motibhai v. Haridas* (22 Bom. 315).

In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the suit for the purposes of jurisdiction is the amount at which the plaintiff values his share.—*Velu Goundan v. Kumara Velu Goundan* (20 Mad. 289).

(c).—

Declaratory decree or order.—Consequential relief.—

This clause applies where *consequential relief* is prayed. Where no consequential relief is prayed Art. 17, cl. III. of Sch. II. will apply. But see the Specific Relief Act (I. of 1877), s. 42, proviso, which enacts that no Court shall make any declaratory decree where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

Evasion of the Stamp Law.—Declaratory suit.—Suit for possession.—The provision as to declaratory suits requires great care and circumspection in its application. A declaratory decree should not be made where the object of the plaintiff is to evade the stamp laws, or to eject under colour of a mere declaration of title. The law allows plaintiff in some cases to rectify a mistake as to stamp-duty, but this privilege is subject to qualification, and does not exist where the relief to be granted is altogether distinct from that originally sought. In such a case the plaintiff should not be allowed to put an additional stamp on his plaint. Where the plaintiff sued on a stamp of Rs. 10 for a declaration of his title to land worth Rs. 19,000, in the possession of the defendant, it was held that the suit could not be maintained, and that the plaintiff was not entitled to put an additional stamp on the plaint, and convert his suit into one for possession.—*Chokalinga-peshama v. Achiyar* (1 Mad. 40).

Distinguished in *Gulzari Lall v. Jadaun Rai* (2 All. 69).

Evasion of the Stamp Law.—Suit for declaration.—Real object.—The defendant was in possession of the estate of a deceased gosavi as his shishya (spiritual son). The plaintiff sued upon a stamp of Rs. 10 for a declaration that he was the true shishya of the said gosavi by a previous adoption, his real object being to establish a title to the estate in the hands of the defendant. Held, that under the circumstances the Court would not exercise,

in the plaintiff's favour the discretionary power to grant a declaratory decree vested in it by s. 42 of the Specific Relief Act (I. of 1877), inasmuch as to do so would enable the plaintiff to obtain relief on a stamp of Rs. 10, which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law.—*Ganpatgir Bholaqir v. Ganpatgir* (5 Bom. 230).

Distinguished in *Dhondo Sakharam Kulkarni v. Govind Babaji Kulkarni* (9 Bom. 20).

Referred to in *Bai Anope v. Mulchand Girdhar* (9 Bom. 355).

Declaratory decree.—Amendment of plaint.—Where it is open to the plaintiff to ask for an account against the defendant of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by s. 42 of the Specific Relief Act (I. of 1877), from asking for a mere declaratory decree. Plaint allowed by the High Court to be amended by insertion of a prayer for account.—*Bai Anope v. Mulchand Girdhar* (9 Bom. 355).

Followed in *Sardarsingji v. Ganpatsingji* (14 Bom. 895).

Declaratory decree.—Amendment of plaint.—A suit should not be dismissed by an Appellate Court on the ground of its being one asking merely for declaratory decree and no consequential relief, where that objection has never been taken by the defendants to the suit. The plaintiffs should, in such a case, be allowed an opportunity of amending their plaint.—*Limba bin Krishna v. Rama bin Pimplu* (18 Bom. 648).

Followed in *Chonu v. Umma* (14 Mad. 48).

Declaratory decree.—Amendment of plaint.—Injunction.—The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a talukdari estate, to the exclusion of defendant No. 1, who he alleged was a supposititious child set up by his step-mother to defeat the plaintiff's right to inheritance. It appeared that defendant No. 1, had obtained a decree against the plaintiff's father, establishing his legitimacy, and declaring him entitled to receive maintenance out of the estate in question. In accordance with his decree, the Talukdari Settlement Officer (defendant No. 2), who was in management of the estate under Bom. Act XXI. of 1881, paid defendant No. 1 an allowance of Rs. 200 a month on account of his maintenance. The plaintiff alleged that the payment to defendant No. 1 was illegal and wrongful, but he did not ask for an injunction restraining him from receiving the allowance. Held (Candy, J., dissenting), that the suit was barred under s. 42 of the Specific Relief Act (I. of 1877), as the plaintiff had omitted to seek the relief of an injunction against defendant No. 1, restraining him from receiving future payment of maintenance. Held, further, that the plaintiff was at liberty to amend his plaint by praying for an injunction as against both defendants.—*Sardarsingji v. Ganpatsingji* (14 Bom. 895).

Suit to set aside adoption.—Real object.—Held, that a plaintiff seeking to set aside a *lehnamah*, and thereby aiming at the possession of immovable property, ought not to be allowed to bring his suit on a stamp of Rs. 10, and to frame it as if it were to set aside an adoption. — *Bama Soondaree Dossee v. Soorjo Coomar Roy* (22 W. R. 338).

See notes under Sch. II. Art. 17, cl. V, *post*.

Suit to eject trustee.—By an agreement between S and M members of the same Hindu family, it was arranged that certain immovable property dedicated to charitable uses by the family should be managed by M subject to the supervision of S and that M should render accounts to S and observe certain other conditions. S sued M in the Court of the District Munsif for the removal of M as manager, and for the appointing of himself as manager of the property. *Held*, that S was not entitled to sue for the removal of M without praying for his ejectment from the property; and that, as the property exceeded in value Rs. 2,500, the District Munsif had no jurisdiction. — *Sonachala v. Manika* (8 Mad. 516).

Suit for account.—Damages.—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will, and in which he claims damages to the extent of Rs. 85,000 in default of his obtaining the accounts, should be filed on the stamp required for a suit for the recovery of Rs. 35,000, and not on a stamp of Rs. 10, which, under cl. 3, Art. 17, Sch. II. of the Court Fees Act, 1870, is the stamp laid down for a declaratory suit in which no consequential relief is sought, and which cannot be valued. — *Ram Doolal Singh v. Gopal Kristo Singh* (16 W. R. 156).

Suit for possession and wasilat.—In a suit for possession and wasilat plaintiff obtained a decree declaring his right to possession upon the death of his father. *Held*, that as the decree had given consequential relief, *i. e.*, relief from the operation of conveyances and mortgages, which on the face of them affected plaintiff's interest, an appeal from the decree should bear an *ad valorem* stamp-duty. — *A. B. Miller v. Akhooree Ram* (15 W. R. 412).

Attachment of joint property.—Does not amount to dispossession.—Declaratory suit.—Consequential relief not necessary.—The defendants obtained a decree against D, father of the plaintiffs, for satisfaction of his debt, by the sale of a moiety of a village mortgaged to him by D. In execution of it B attached the mortgaged property the attachment being made under s. 274 of the Civil Procedure Code (X. of 1877) by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase gift or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a

declaration of their right to two-thirds of the property. The District Judge who tried the suit rejected it on the ground that it was barred by s. 42 of the Specific Relief Act (I. of 1877), because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a *dispossession*, and that the plaintiffs might have asked to be *replaced in possession*, or, at any rate, for the removal of the attachment. *Held*, by the High Court on appeal, that the plaint was not open to objection on the ground that it only asked for a declaratory decree without any consequential relief. *Held*, that the prohibitory order to D did not constitute a *dispossession* of D, and still less of the plaintiffs and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to D, so long as they admitted that D had an interest in the attached property. *Held*, also, that the plaintiffs could not have properly asked for any consequential relief in their suit, but that when they instituted it they were entitled, and indeed bound, to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendant's decree against D, from afterwards alleging that he had purchased without notice of the plaintiffs' claim. — *Narayanrao Damodar v. Balkrishna Mahadev* (4 Bom. 529).

Followed in *Kolasherry Illath Narainan v. Kolasherry Illath Nilakandan Nambudri* (4 Mad. 181).

Attachment of joint property.—Declaratory suit.—Ten-rupee stamp sufficient.—The plaintiffs having raised a claim to a *kanom* attached in execution of a decree against their undivided brother, which was allowed in part, now sued for a declaration of their title to four-fifths of the *kanom* amount, affixing to the plaint a Rs. 10 stamp. The plaintiffs obtained a decree against which the defendant appealed to the District Court. While the appeal was pending, the District Judge, holding that the Court-fee paid on the plaint was insufficient, ordered that the plaintiffs should pay the balance due on an *ad valorem* computation of the fee and in default that the suit should stand dismissed. The balance not being paid within the time fixed, the District Judge made an order dismissing the suit. *Held*, that the plaint was sufficiently stamped, and that, in any case, the order dismissing the suit while the appeal was still pending was irregular. — *Kammathi v. Kunhamed* (15 Mad. 288).

Suits for removal of trustees.—

See notes, *ante*, p. 20.

Suits to set aside orders, attachments, &c.—Declarations.—Consequential relief.—

Confirmation of right and possession.—The plaintiff claiming under a will of the deceased, applied for a certificate under Act XXVII. of 1860, but the High Court on appeal refused the same. He now brought a suit, alleging

that he was in possession of the property of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held*, that cl. 3, Art. 17 of Sch. II. of Act VII. of 1870, did not apply. This was not a suit to obtain a declaratory decree, where no consequential relief was prayed.—*Dinabandhu Chowdhry v. Rajmohini Chowdhari* (8 B. L. R., Ap., 32; s. c., 16 W. R. 213).

Confirmation of possession after declaration of title.—In a suit for a declaratory order to set aside a summary order under Act VIII. of 1859 (Civil Procedure), s. 246, where plaintiff asked also for an order "confirming possession after declaration of title," it was *held* that consequential relief was sought, and the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act.—*Bohroonissa Bibee v. Kureemoonissa Khatoon* (19 W. R. 17).

Suit to establish right to attached property and for protection from sale.—In a suit under s. 293 of Act X. of 1877 (Civil Procedure), for a declaration of her proprietary right to certain immovable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." *Held*, that consequential relief was claimed in the suit, and Court-fees were therefore leviable under s. 7, cl. IV. (c), and not under Sch. II., Art. 17 (III.) of Act VII. of 1870.—*Ram Prasad v. Sukh Dai* (2 All. 720).

But see *Dhondo Sakharam v. Govind Babaji* (9 Bom. 20), and other cases, under Sch. II. Art. 17, cl. I., *post*.

See *Ostoché v. Hari Dass* (2 All. 869), *post*, under the heading "Valuation of relief sought."

Suit for a declaration of right to property and possession.—In a suit for a declaration that the plaintiff had a right of property and possession in a certain house under attachment, being in effect a suit for the removal of the attachment, *held*, that the plaintiff, having for its object the relief of the house from attachment, does seek consequential relief.—*Motichand Jaichand v. Dadabhai Pestanj* (11 Bom. H. O., A. C., 186).

Distinguished in *Gulzari Lall v. Jadaun Rai* (2 All. 63).

Suit to release property from attachment.—A suit brought under the provisions of s. 246 of Act VIII. of 1859 (Civil Procedure) to set aside an order allowing a claim to attached property and releasing the property from attachment is a suit to try the title and establish the right of the person who brings the suit; and such a suit must be valued according to the value of the property, and cannot be brought upon a stamp of Rs. 10, under Art. 17 of Sch. II. of the Court Fees Act (VII. of 1870).—*Mufti Jallaluddeen Mahomed v. Shohorullah* (15 B. L. R., Ap., 1; s. c., 22 W. R. 422).

Dissented from in *Gulzari Lall v. Jadaun Rai* (2 All. 63).

Followed in *Ahmed Mirza v. A. Thomas* (13 Cal. 162).

Suit to establish right as heir.—Consequential relief.—Where plaintiff sued to establish her right as the heir of her deceased son and to set aside a certificate under Act XXVII. of 1860 granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government Promissory Notes belonging to the estate of the deceased, *held*, that as consequential relief was to follow the declaratory decree sought, the stamp-fee of Rs. 10 prescribed by Art. 3, s. 17, Sch. II., Court Fees Act, was not sufficient for the plaint.—*Mokhoda Dassee v. Nobin Chunder Mitter* (16 W. R. 259).

Suit for establishing right to a share in joint family property and for protection of the share from liability.—The allegations made in the plaint in this case were:—That defendants 9 to 11, members of a joint Hindu family had recklessly and extravagantly and without any legal or family necessity encumbered the ancestral property with unlawful debts, had executed bonds in favour of the other defendants whereupon decrees had been obtained behind the back of the plaintiffs, members of the family, and the ancestral property advertised for the sale. They prayed for the following reliefs:—That a declaratory decree in respect of the plaintiff's own shares in the family property may be passed in plaintiff's favour protecting the property in question which bears a jama of Rs. 147-6-7, ten times whereof is Rs. 1,474-1-10, and the market-value of which is Rs. 25,000, from the auction-sale and from all liability for the unlawful debts and staying the sale fixed, and should any lawful debts be found payable by the plaintiff's share, a proper order may be made for their payment. *Held*, that the suit was one for a declaratory decree in which consequential relief is asked and that the Court-fee must be paid *ad valorem*.—*Lachmi Narain v. Gauri Shankar* (W. N., 1886, p. 154).

One H G the head of a Hindu family executed mortgage-deeds in 1873 and 1877 in favour of S P. S P obtained a decree on these bonds against H G, and in execution thereof attached and put up to sale the property hypothecated, a 5 annas 4 pies share in certain villages. Plaintiffs, the other members of the family of which H G was the head, objected, claiming to be in possession of $\frac{1}{3}$ of the share attached. Their objection was disallowed, hence this suit. The reliefs prayed for were:—(i) for a decree establishing their right to a $\frac{1}{3}$ share of the property and declaring that such share shall be exempted from mortgage-lien; (ii) for a decree setting aside (a) the proceedings taken for attachment and sale of the property as belonging altogether to H G, and (b) the order in the miscellaneous department." *Held*, that the prayer "that such share shall be exempted from mortgage-lien" amounted to a substantial consequential relief and therefore the fee chargeable was that provided for

by s. 7, cl. IV. (c) of Act VII. of 1870, and not that provided for mere declaratory suits. *Gulsari Mal v. Jadoun Rai* (2 All. 720) followed. The deficiency not having been made good within the time allowed the appeal was rejected.—*Makhan Lal v. Surju Prasad* (W. N., 1885, p. 48).

Suit after rejection of claim to attached property.—In execution of a decree by the defendant certain property was attached as being that of the judgment-debtor. The plaintiff preferred a claim, but his claim was disallowed, and the property ordered to be sold. In a suit to have it declared that the property belonged to the plaintiff, *held*, it was a relief in which consequential relief was asked for, and that the *ad valorem* duty prescribed by Sch. I. of the Court Fees Act was payable on the plaint, and not that provided by Sch. II., Art. 17. *Jalaluddin Mahomed v. Shohorullah* (15 B. L. R., Ap., 1; s. c., 22 W. R. 422) followed.—*Ahmed Mirza v. A. Thomas* (13 Cal. 162).

See notes under cl. VIII., and Sch. II., Art. 17, cls. I. and III., *post*.

Right to attach a sum of money.—Consequential relief.—Where a plaintiff prayed in his plaint for a declaration of his right to attach a sum of money in the hands of a third person in execution of his decree against A, and also for a decree for such sum against the defendant in the event of his obtaining such money before the decision of the suit, and the defendant did so obtain the money,—*held*, that the memorandum of appeal which was stamped only in the amount necessary to carry a declaratory decree, was insufficiently stamped.—*Durgaram v. Wakadu* (P. J., 1881, p. 96).

Suit for share of profits of Inam lands.—The Court-fee on the memorandum of appeal in a suit for a declaration that, under an express agreement, the plaintiff is entitled to a certain share of the net income of certain Inam land, must be calculated under s. 7, cl. IV. (c), and upon the principle adopted by the Legislature in s. 7, cl. II., ten times the average annual profits may be taken to be the value of the relief in respect of future profits.—*Fakirbhai v. Sorabji* (P. J., 1883, p. 205).

Suits to set aside documents.—

See s. 39 of the Specific Relief Act (I. of 1877).

Cancellation on the ground of fraud.—Valuation.—The plaintiff executed a document whereby he created a charge of Rs. 4,500 upon certain immoveable property. In a suit to cancel the document upon the ground of fraud, *held*, that the plaintiff valued his relief at Rs. 4,500, and that the District Munsif had no jurisdiction to try the suit.—*Naraina Putter v. Aya Putter* (7 Mad. H. C. 372).

Suit to set aside deed.—In a suit by the heirs of a Mahomedan pardanashin lady to set aside a deed of sale executed by her, whilst living apart from her relations, in the

house of the purchaser, who had occasionally acted as her makhtar, *held*, that some evidence to impeach the deed should be given by the plaintiffs before the onus of supporting it is thrown on the purchaser. Where, in such a suit, the substantial relief prayed for is that the deed should be set aside, the Court is not justified in substituting therefor a mere declaration of the plaintiffs' title.—*Thakoor Deen Tewarry v. Nawab Syed Ali Hossein Khan* (18 B. L. R. 427, P. C.; s. c., 21 W. R. 340; s. c., L. R., 1 I. A. 192).

Followed in *Joy Narain Giree v. Grish Chunder Mytee* (22 W. R. 438).

Suit to set aside a deed or will.—Upon the principle laid down in 21 W. R. 340, P. C., *viz.*, that where a plaintiff asks to have a deed or will set aside, there is a prayer for substantial relief, it was *held* that a plaint for confirmation of possession and for setting aside a forged and invalid will could not come under the Court Fees Act, Sch. II., Art. 17, cl. 3, but must be stamped according to the value of the subject-matter of the suit.—*Joy Narain Giree v. Grish Chunder Mytee* (22 W. R. 438; s. c., 15 B. L. R. 172).

Suit to set aside a false sale-deed.—In a suit to annul a sale-deed a stamp calculated on the consideration money mentioned therein is sufficient. And even if this were not so, it was the duty of the Court in which such suit was preferred, to give the suitor the option of supplying such additional stamp as was thought necessary before rejecting the plaint.—*Thakoor Paluck v. Ram Soomrun Lall* (1 N.-W. P. 16; s. c., 2 N.-W. P. 433).

Suit to set aside a trust-deed.—See *Mahomed Maish v. Malkai Mukadrai* (10 Cal. 380), *ante*, p. 20.

Suit to have a lease set aside and for possession of land.—See *Jogal Kishor v. Tale Singh* and *Bindeshri Chaubey v. Nandu* (4 All. 820), *post*, under the heading "Valuation of relief sought."

Suit to cancel an instrument affecting land. See *Kanaran v. Komappan* (14 Mad. 160), *post*, under the heading "Valuation of relief sought."

Cancellation of an agreement to sell.—The plaintiff had executed an agreement to sell certain property in discharge of mortgages executed on his behalf during his minority. He now brought a suit, alleging that the agreement had been extorted from him and praying for a declaration that the agreement was not binding on him, and for any other relief "which the Court considers to be reasonable." *Held*, that the plaintiff was bound to pay Court-fees upon the value of his interest in the document sought to be invalidated.—*Parathayi v. Sankumani* (15 Mad. 294).

But see *Karam Khan v. Daryai Singh* (5 All. 331), under Sch. II., Art. 17, cl. III., *post*, in which *Thakoor Deen v. Nawab Syed Ali* and *Joy Narain v. Grish Chunder* were distinguished.

Consequential relief.—Injunction.—

Suit for declaration.—Injunction.—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and falls within Art. 17, cl. III. of Sch. II. of Act VII. of 1870. A suit praying for such a declaration as the above, and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands, or a suit praying for such declaration as the above and also for a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under s. 7, cl. IV., Art. (c) of Act VII. of 1870, as being a suit "to obtain a declaratory decree or order where consequential relief is prayed," and also within Art. (d) of the same section, as being a suit "to obtain an injunction;" and a suit of the third species described above would fall under Art. (f) of the same clause, as being a suit "for accounts."—*Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219).

Suit for a declaration and injunction.—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain *devasthan* immovable and moveable property. His plaint which bore a ten-rupee stamp contained a prayer for an injunction. The Subordinate Judge rejected the plaintiff's claim on the ground that he had not paid the proper stamp-fees. On an appeal to the High Court, *held*, that the plaint was insufficiently stamped. The injunction prayed for would be consequential relief, and cl. IV. (c) of s. 7 of the Court Fees Act (VII. of 1870) was, therefore, applicable. The applicant was accordingly required to state in the memorandum of appeal at what amount he valued the relief sought, in order that the fee might be computed.—*Raghunath Ganesh v. Ganadhar Bhikaji* (10 Bom. 60).

Declaration of right and injunction.—A suit for declaration of right and for an injunction falls under s. 7, cl. IV., sub-cla. (c) and (d) of the Court Fees Act (VII. of 1870).—*Sardarsingji v. Ganpatsingji* (17 Bom. 56).

Suit for declaration and injunction.—Where plaintiffs sued for a declaration that they were entitled to share in certain talukdari estates, and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted, for an order to defendant to keep a correct account of the timber removed, the First Class Subordinate Judge rejected the claim for want of jurisdiction. *Held*, that the suit was one for a declaration and consequential relief under s. 7, cl. IV. (c), of the Court Fees Act; and that, as the claim was valued at Rs. 230 only, the appeal lay under Act VII. of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief.—*Gulabsingji v. Lakshmansingji* (18 Bom. 100).

Valuation of relief sought.—

Fee payable according to the amount at which the relief is valued in the plaint.—S. 54 of the Code of Civil Procedure.—*Quere.*—Whether in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants' books, and for a mandatory injunction for the production of those books, or of a suit for such declaration and for a positive decree for the taking of an account and the production of the defendants' books, the plaintiff would, by virtue of s. 17 of Act VII. of 1870, require separate stamps under Arts. (d) and (f) of cl. IV., s. 7, or be sufficiently covered by the stamp under Art. (c) of the same clause, and whether assuming the declaration and the account, each to require a stamp, the prayer for an injunction or order for the production of books is not merely ancillary to, and not a distinct subject from, the taking of an account.—*Quere.*—Whether the provision in s. 7, cl. IV. of Act VII. of 1870, that the amount of the fee payable in suits falling within that clause shall be computed "according to the amount at which the relief sought is valued in the plaint," is so inconsistent with that portion of s. 31 of Act VIII. of 1859 (see now s. 54 [a] of the Civil Procedure Code XIV. of 1882) which permits the Court receiving the plaint to revise the valuation of the claim, as to render that portion of s. 31 of Act VIII. of 1859 inoperative in suits within s. 7, cl. IV. of Act VII. of 1870, notwithstanding the concluding passage in that clause? *Quere.*—Whether the concluding passage in cl. IV., s. 7 of Act VII. of 1870 is too express to admit of a limitation of the power of the Judge, and leaves him the right to revise the valuation placed on suits under cl. IV. by the plaintiff? But assuming this to be so, it would generally, not be advisable that the Judge should enhance the valuation on the reception of the plaint. The fee payable under s. 7, cl. IV. of Act VII. of 1870 is according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the plaint.—*Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219).

Valuation rests with the plaintiff.—Plaintiff has a right to put his own valuation.—A suit for a declaration of right and for an injunction, the valuation of the relief sought rests with the plaintiff, and not with the Court. A sued B and C (1) for a declaration of his title to certain property, and (2) for injunction restraining C from paying and from receiving, an allowance of Rs. 2,400 year, out of the income of the property dispute. A valued each of the reliefs sought at Rs. 130, and affixed a Court-fee stamp of Rs. 20 to the plaint. The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should have been valued ten times the annual allowance paid by C to B, as provided by s. 7, cl. II., of Act VII. of 1870. On appeal to the High Court, *held*, that the suit fell under s. 7, cl. IV., sub-cla. (c) and (d) of the Court Fees Act, and the plaintiff had a right to put his own valuation on the

relief sought. *Held*, also, that the order rejecting the plaint as insufficiently stamped was appealable.—*Sardarsingji v. Ganpatsingji* (17 Bom. 56).

Valuation rests with the plaintiff and not the Court.—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as s. 7 of the Court Fees Act directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the lower Appellate Court remanded from the plaintiff Court-fees in respect of his plaint and memorandum of appeal computed on the market-value of such house, the plaintiff having only paid in respect of those documents respectively the Court-fees payable in a suit for a declaration of the right, where no consequential relief is prayed. *Held*, that the market-value of the property could not be taken by the lower Appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property, and that, as the valuation of the relief sought rested with the plaintiff and not the Court, and as, in this instance, the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further Court-fees could not be demanded by the lower Appellate Court from the plaintiff.—*Otoche v. Hari Dass* (2 All. 869).

But see *Boidya Nath Adya v. Makhan Lal Adya* (17 Cal. 680), *ante*, p. 21.

Suit to have a lease set aside, and buildings erected by lessees demolished.—*Valuation.*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the buildings erected on such land by the lessees demolished, on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at Rs. 100.

The value of the buildings of which they sought demolition was Rs. 3,000. B sued N, claiming, *inter alia*, possession of certain land, and to have certain buildings erected thereon by the defendant demolished. *Held*, with reference to the above-mentioned suits, that in estimating their value for the purposes of the Court Fees Act, 1870, or of the Bengal Civil Courts Act, 1871, the value of the buildings, which might have to be demolished, should not be taken into account. *Held*, by Wright, Brodhurst, and Tyrrell, JJ., with reference to the first suit, that it was one for a declaratory decree in which consequential relief was prayed, and fell under s. 7, Art. IV., of the Court Fees Act, 1870, and such relief was valued at Rs. 100, had been properly estimated in the Munsif's Court.—*Jogal Kishor Dasgupta and Bindeshri Choubey v. Nandu* (All. 320, F. B.; s.c., W. N., 1882, p. 44).

Suit to cancel instrument affecting land.—Partial interest of plaintiff in the land.—*Valuation.*—In a suit in a subordinate Court by members of a Malabar tarwad to set aside an instrument affecting the whole of the tarwad property, the Subordinate Judge held that Court-fees were leviable, assessed on the value of the property, and accordingly ordered an additional payment to be paid by the plaintiffs. The plaintiffs failed to make the payment, and the Subordinate Judge dismissed the suit. *Held* (1) that the order was erroneous, since the plaintiffs would not be gainers to the extent of the value of the property if they obtained a decree; (2) that the High Court was not precluded by the Court Fees Act, s. 12, from revising it, and reversing the decree.—*Kanaran v. Komappan* (14 Mad. 169).

(d).—

Injunction.—Valuation.—

See notes on the preceding page.

*Suit to stay *bahwara* proceedings.*—An allottee under a private partition, sued to stay subsequent partition proceedings under Beng. Reg. XIX. of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the revenue authorities. *Held*, that such a suit should be considered to be one for a declaratory decree, or for something in the nature of an injunction, and that, therefore, the plaint should not be stamped according to the value of the entire estate.—*Joynath Roy v. Lall Bahadour Singh* (8 Cal. 126; s.c., 10 C. L. R. 145).

Bengal Tenancy Act (VIII. of 1885).—Suit by a third party claiming rent paid into Court.—A suit by a third person under cl. 3 of s. 149 of the Bengal Tenancy Act is not a title suit, and need not be stamped as such. *Per Tottenham, J.*—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.—*Jagadamba Devi v. Protap Ghose* (14 Cal. 537).

(e).—

Easements.—Valuation.—

Right to close a new door.—A party must show due right or interest in the subject-matter of the suit to entitle him to complain of any acts injurious thereto, and a mere stranger without interest cannot maintain any suit. Such a right, for the purposes of a suit to close a new door alleged to have been opened with a design to assert (injuriously) rights over adjacent lands, may be shown without paying the stamp necessary in a suit directly for the land itself.—*Chundun v. Talib Ali* (2 N.-W. P. 41).

Claims to the waters of a flowing stream.—*Valuation.*—In ascertaining whether or not there ought to be an appeal to the Privy Council, the High Court has only to look at the value of the question at issue in litigation.

In a case of conflicting claims with regard to the waters of a flowing stream, the matter at issue, so far as regarded the applicant, having been to have her lands irrigated in the way she claimed, the value of that matter according to s. 7 of the Court Fees Act (VII. of 1870) was held to be the extent to which her interests would be deteriorated if that right could not be established.—*Ajnas Koor v. Mussamut Luteeza* (18 W. R. 21).

(f).—

Suits for account and winding up of partnership.—

Contract Act (IX. of 1872), s. 265.—The stamp-duty payable on an application to the District Court under s. 265 of the Indian Contract Act (IX. of 1872), for an account and winding up of partnership should be an *ad valorem* fee under s. 7, cl. IV. (f) of the Court Fees Act (VII. of 1870).—*Bhogilal v. Popathbhai* (7 Bom. 125).

An application for the winding up by the Court of the business of a firm after the termination of the partnership, under s. 265 of the Indian Contract Act (IX. of 1872), whatever it be called, is essentially a plaint, and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation.—*Eraikshah Dhanjiseti v. Adarji Dorabji* (7 Bom. 535).

An application to the Court to wind up a partnership made under s. 265 of the Contract Act (IX. of 1872) is in the nature of a suit for an account, and should be stamped accordingly.—*Abad Ali Pradhan v. Jamir-uddin Mahomed* (18 C. L. R. 160).

Appeal from an order under s. 265 of the Contract Act.—The stamp-duty payable on an appeal from an order made by a District Judge on an application under s. 265 of the Contract Act (IX. of 1872) should be an *ad valorem* fee as in a suit for accounts, under s. 7 cl. IV. (f) of the Court Fees Act (VII. of 1870).—*Ladubhai Premchand v. Revichand Venichand* (6 Bom. 143).

Suit for the production of account books and property.—See *Manohar Ganesh v. Bawa Ramcharan Dass* (2 Bom. 219), *ante*, p. 26.

Suits for account.—Valuation.—

See notes, *ante*, pp. 26-7.

Plaintiff may fix his own valuation.—By s. 7, cl. IV. (f) of the Court Fees Act (VII. of 1870), the plaintiff in a suit for accounts must state the amount at which he values the relief sought, but he is free to fix it as he thinks proper, subject to the provisions of s. 11 which precludes the execution of the decree in case it exceeds such value until the execution fee has been paid.—*Govindas v. Dayabhai* (9 Bom. 22).

Civil Procedure Code, s. 54.—Judge's power to make valuation.—The plaintiffs brought a suit for an account, and approximately valued their claim at Rs. 18-15-0. The Subordinate Judge was of opinion that the claim was for

recovery of money, and should have been valued at Rs. 1,000. He therefore called on the plaintiffs to make up the stamp to that required on this valuation, and plaintiffs refusing, he dismissed their suit under s. 54 (b) of the Civil Procedure Code (XIV. of 1882). *Held*, that in any case, the Subordinate Judge was wrong. If the suit was one really for an account, the plaintiffs were entitled to value the relief they sought approximately, as they had done; if it were not one for an account, but for recovery of money, still the Subordinate Judge had no power himself to value the relief sought, but should have called on the plaintiffs to value the relief they sought, and then if he had thought such relief was undervalued, he could have applied s. 54 (a) of the Code of Civil Procedure (XIV. of 1882), and rejected the suit.—*Balvantrao v. Bhimshankar* (13 Bom. 517).

Suit for account.—Specific sums claimed in appeal.—See *Fatma Begum v. Mir Zulfiqar Ali Khan* (P. J., 1887, p. 278), *ante*, p. 19.

Valuation for the purpose of jurisdiction.—

Quere.—Whether the First Class Subordinate Judge had jurisdiction to try a suit for an account where the plaint states that the property in the hands of the defendants, in respect of which the account is prayed, exceeds Rs. 5,000, but values the claim at Rs. 100.—*Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219).

Suit for account.—Valuation for the purpose of jurisdiction.—The plaintiffs sued for an account of all the business done by the defendants as their commission agents from 1854 to 1867, and prayed that whatever was found due might be awarded with interest. The plaintiffs valued the relief sought approximately at Rs. 510, and this was the only valuation stated in the plaint. The suit was filed in the Court of a First Class Subordinate Judge, who rejected the plaintiffs' claim. Against this decision the plaintiffs preferred an appeal to the High Court. *Held*, that as the approximate amount of the claim was stated in the plaint to be Rs. 510, that must be taken to be the value of the subject-matter of the suit for purposes of jurisdiction. The appeal, therefore, lay under ss. 8 and 26 of Act XIV. of 1869, not to be High Court, but to the District Court. Under s. 50 of the Code of Civil Procedure (XIV. of 1882), if a plaintiff seeks the recovery of money, the plaintiff must state the precise amount so far as the case admits, while in a suit for the amount which will be found due on taking unsettled accounts, the plaintiff need only state approximately the amount sued for. As in the former instance the precise amount, so in the latter the approximate amount, stated in the plaint, must be taken to be the amount or value of the subject-matter of the suit for the purposes of jurisdiction.—*Khushalchand Mulchand v. Nagindas Motichand* (12 Bom. 676).

Valuation for Court-fees.—Valuation for jurisdiction.—*Suits Valuation Act* (VII. of 1887),

§ 8.—In a suit for an account the valuation for purposes of Court-fees determines the question of jurisdiction, the valuation for both purposes being the same under s. 8 of Act VII. of 1887. The plaintiff sued for an account, and valued the relief sought at Rs. 130. The suit was filed in the Court of a Subordinate Judge of the First Class. The Subordinate Judge rejected the claim. Thereupon the plaintiff appealed to the High Court valuing his claim in appeal at Rs. 10,500. *Held*, that the appeal lay to the District Court, and not to the High Court.—*Bhagvantrai Munshi v. Mohi Rajurao* (18 Bom. 40).

See Gulabsingji v. Lakshmansingji (18 Bom. 28), p. 28.

Suit to take accounts.—Court-fee.—Jurisdiction.—According to s. 8 of the Suits Valuation Act (VII. of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff. In a suit for taking account the plaintiff having contained several items which were all incidental to the chief item of relief, the plaintiff was held to be substantially one to have the minor plaintiff's estate administered, that is, to have accounts taken and the accounting party ordered to pay what (if any) should be found due from him on the balance of such account. The plaintiffs having put the valuation of the suit at Rs. 130 in the plaint, *held*, that the High Court had no jurisdiction to hear the appeal against an order rejecting the plaint. The appeal lay to the District Court. The appeal was therefore returned for presentation in the proper Court.—*Bai Amba v. Pranjivandas Dullabhram* (19 Bom. 198).

Decree for more than the value of the claim.—Additional fee paid under s. 11 of the Court Fees Act.—In a suit for an account of partnership dealings, the plaintiffs valued the claim approximately at Rs. 600. The Subordinate Judge passed a decree awarding to the plaintiffs a sum of Rs. 30,890-9-2. The plaintiffs thereupon paid an additional Court-fee of Rs. 900 under s. 11 of the Court Fees Act (VII. of 1887). The defendants appealed to the High Court. The plaintiffs objected that the valuation for purposes of jurisdiction being the same as that for purposes of Court-fees, the appeal lay to the District Court and not to the High Court. *Held*, that the valuation for the purposes of Court-fees in this case was the amount decreed, and the value of the subject-matter of the suit exceeded Rs. 5,000; the appeal, therefore, lay to the High Court under s. 26 of Act XIV. of 1869 (Civil Courts, Bombay).—*Ibrahim Issaji v. Bejanji Jamsedji* (20 Bom. 265).

Clause V.—

Suits for partition and possession.—

See notes, *ante*, p. 21.

Suit by co-owner of a village.—A co-owner of village lands sued in 1861 to have them divided among villagers according to a

custom (last observed in 1835) that at the expiration of every twelve years the land should be re-distributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. *Held*, that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the shares in the village, and that the stamp on the plaint need only be proportioned to the value of the property *actually sued for*.—*Venkataswami Nayakkan v. Subba Rau* (2 Mad. H. C. 1).

But see *Unnoda Persad Roy v. Erskine*, (12 B. L. R. 370, F. B.; s. c., 21 W. R. 68), where a patni taluk, belonging to several co-sharers, each of whom collected his own share of rent from the mehal, was sold for arrears of rent, and one of the co-sharers brought a suit in the Munsiff's Court to recover possession of his share by setting aside the sale, and valued his suit according to his share, making the other co-sharers defendants. *Held*, that the suit could not be maintained in that form. The cause of action was the sale of the whole estate, and the suit should have been framed and valued accordingly, and brought in a Court in which the rights of all the parties interested in setting aside the sale might have been declared in one suit.

Appeal in partition suit.—See *Kirty Churn Mitter v. Aunath Nath Deb* (8 Cal. 757; s. c., 11 C. L. R. 95), under Sch. II., Art. 17, cl. VI., *post*.

Suit to eject a tenant.—

A suit to eject a tenant at fixed rates is a suit for possession of land within the meaning of para. V., s. 7 of the Court Fees Act, 1870; and the valuation of such suit for the purposes of Court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant-right, not of the land itself, nor of nearly one year's rent.—*Ram Raj Tewari v. Girnandan Bhagat* (15 All. 68; s. c., W. N., 1892, p. 240).

For rulings under the Stamp Act X. of 1862, see *Rajchunder Roy v. Chundee Churn Naik* (8 W. R. 437) and *Gopee Mahun v. T. B. Mackintosh* (9 W. R. 395).

(a).—

Suit by subordinate tennure-holder.—

Suit for possession of a fractional part of an estate.—The assessment of the Court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of sub-division (a), cl. V. of s. 7 of the Court Fees Act.—*Hubibul Hossein v. Mahomed Reza* (8 Cal. 192; s. c., 10 C. L. R. 385).

Bagayat land.—Suit for.—

Bagayat land paying annual revenue to Government should be valued, for the purposes of Court-fees, under para. (a), and not para. (c), cl. V., s. 7.—*Raghu v. Yellapa* (P. J., 1884, p. 150).

(b).—

Suit for partition of Talukdari estate.—

In a suit for the partition of a Talukdari estate held under a settlement for 23 years expiring in 1886, at a lump assessment of Rs. 150 payable annually to Government, the survey assessment being Rs. 621-6-7:—*Held*, that the Court-fees must be calculated under sub-clause (b) of cl. V. of s. 7 of Act VII. of 1870.—*Bavaji Mohanji v. Punjabhai Hanubhai* (P. J., 1881, p. 177).

Definite shares of an estate.—

Held, that the Court-fee chargeable on plaintiff in a suit for a declaration of right to land and possession of "definite shares of 15 estates paying an annual revenue to Government, such shares being recorded in the Collector's register as separately assessed with such revenue, and such revenue being settled but not permanently" was one computed according to 5 times the revenue payable in respect of the share, and not one computed according to the estimated value of the shares.—*Ishri Dial v. Kishen Das* (W. N., 1881, p. 5).

(c).—

Paramba (garden) in Malabar.—

On its appearing that a paramba in Malabar is not subject to land tax, but that a tax is levied on trees of certain kinds which may grow on it, *held*, that a paramba must be regarded for the purposes of the Court Fees Act as a garden or as land which pays no revenue, according to the circumstances of each case.—*Audathodan Moidin v. Pullambath Mamally* (12 Mad. 301, F. B.).

Inam land.—Not surveyed and assessed.—

The valuation of claims for Inam land which has not been surveyed and assessed by Government must be computed according to s. 7, cl. V. (c), the proviso not being applicable.—*Pandurang v. Krishnabai* (P. J., 1889, p. 241).

(d).—

Separate plots of land not being a fractional share of a revenue paying unit.—

Held, that in a suit for pre-emption in respect of *separate* plots of land, which did not constitute any definite fraction of a distinct revenue paying area, and were not themselves separately assessed to revenue, the Court-fee should be paid on the market-value of the land in suit, and not as in the case where the suit is for a definite fractional share, on five times the Government revenue. The effect of these rules (*i.e.*, s. 7, cl. V. [b] [d] and cl. 18 of Notn., No. 4650, 10th Sept. 1889.—Appendix O) is that Court-fee is payable on five times the Government revenue where the subject-matter of the suit is:—(a) an entire estate or definite share of an estate paying revenue to Government; or (b) part of an

estate recorded as separately assessed, or a fractional part of a part recorded as separately assessed, by virtue of the Notification. In all other cases the fee is payable on the market-value. The principle of these rules seems to be this:—Where the revenue is separately assessed, and the suit in respect of a fractional part, say 1/4 or 1/5, the fee may be paid on five times the 1/4 or 1/5 of the revenue assessed on that part. But where the suit is not for a fractional part, but for *distinct plots*, the fee must be paid on the market-value. Where a fractional share is sold, it conveys to the vendee the same fraction in all the plots in that part (whether those plots be of good, bad, or waste and valueless land). Where, however, entire fields or plots are sold, the fields or plots so sold may be the most valuable portion of an estate assessed to revenue, and the rest of it may be valueless land. The revenue assessed on such an estate would be assessed chiefly with reference to the valuable portion.—*Reference under the Court Fees Act, 1870, s. 5* (16 All. 493; s. c., *Baija v. Mir*, W. N., 1894, p. 174).

Proviso.—

Suit by landlord for possession.—In a suit by a landlord against his tenant to recover possession of the land let on termination of the lease owing to non-payment of rent, *held*, that the land was the subject-matter of the suit and the valuation should be under the provisions applicable to the Bombay Presidency of cl. 5, of s. 7, of the Court Fees Act.—*Behramji v. Pestonji* (P. J., 1894, p. 326).

The special rules contained in proviso to cl. V., s. 7, apply to all suits for land in the Bombay Presidency.—*Narayanrao v. Prallad* (P. J., 1888, p. 352).

Suit for possession and mesne profits.—*Decree coupled with condition.*—*Appeal.*—Where in a suit for possession and mesne profits of certain land the Court awarded the plaintiff's claim subject to his paying to the defendant Rs. 3,801, *held*, that the appeal by the plaintiff against the said decree was perfectly valued at the value of the land.—*Patel Jettha Ranchhod v. Pitamber* (P. J., 1891, p. 22).

Proviso (1).—

Suit to manage a village and collect rents.—The plaintiff prayed for a declaration of his right to manage the village and collect rents from tenants on passing a *kabuliyat*, and for possession of that right and for the determination and award of profits of the village during attachment. *Held*, that the suit was one for possession of land and that s. 7 (V.), proviso I. of Act VII. of 1870 applied, and that, following *Vithal v. Balkrishna* (10 Bom. 610), the appeal against dismissing the suit under s. 54 of the Code of Civil Procedure for not correcting the valuation was inadmissible.—*Narayan v. The Secretary of State for India in Council* (P. J., 1894, p. 425).

Khoti estate.—*Held*, that the Khoti estate was an estate paying revenue to Government

upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment, under Act XXVI. of 1867, Sch. B, Art. 11, Note (a), Special Rule 1, for the Bombay Presidency.—*Ex-parte Viihal alias Gopal Ganesh Bivalkar* (4 Bom. H. C., A. C., 148).

Full assessment.—

The term "full assessment" in sub-clause (d), provisos (1) and (2) of s. 7 are equivalent to "survey assessment."—*Bavaji Mohanji v. Punjabhai Hanubhai* (P. J., 1881, p. 177).

Proviso (3).—

Inam lands.—

Inam lands.—Suit for possession by sub-holder.—Lands situated in an Inam village, the subject of a suit for possession between sub-holders to which the Inamdar is not a party, must be valued for the purposes of Court-fees as Inam lands, regardless of the nature of the sub-tenures.—*Vishnu v. Vinayak* (P. J., 1882, p. 87).

Inam village.—Held, that the Inam village in suit was held on a permanent settlement, and that proviso (3) must be applied in determining its value for the purposes of Court-fees.—*Narayanrao v. Pralad* (P. J., 1888, p. 352).

Inam land not surveyed and assessed by Government.—See *Pandurang v. Krishnabai* (P. J., 1889, p. 241), on the preceding page.

Talukdari villages.—Remission.—

Talukdari village.—The remission contemplated by proviso (3) of sub-clause (d) of s. 7, is an express remission, and not a mere difference in amount between the actual assessment payable by the Talukdar and the survey assessment.—Westropp, O. J., and Kemball, J.—*Bavaji Mohanji v. Punjabhai Hanubhai* (P. J., 1881 p. 177).

Construction and applicability of the proviso.—*Valuation of land in a talukdari village*.—*Remission*.—Per West and Nanabhai Haridas, JJ.—The proviso to Art. V. of s. 7 of the Court Fees Act (VII. of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare case of land forming part, but not a definite share, of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement made in order to show the proper amount of the land tax may be regarded as a remission. In the case of a *talukdari* village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual *jama*, or lump assessment, instead of full survey assessment for the whole village: held, by a majority of the Full

Bench, that the difference in amount between the *jama* and the full survey assessment was a remission, and, therefore, a suit for possession of lands in this village was to be valued according to cl. (3) of the proviso to Art. V. of s. 7 of the Court Fees Act (VII. of 1870). Per Birdwood, J.—The remission contemplated by clause (3) of the proviso "is an express remission, and not a mere difference in amount between the actual assessment payable by a *talukdar* and the survey assessment." The three clauses of the proviso seem to apply only to lands which have been subjected to a survey settlement as ordinarily understood and legally provided in the Bombay Presidency; the first clause being applicable to lands settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to *inam* lands on which the whole or a part of the survey assessment has been expressly remitted. The *talukdars* are not *inamdars*. They are landholders liable to pay a land tax, but not under a survey settlement, such as is applicable to lands for which provision seems to have been specially made in the proviso to cl. V. of s. 7 of the Court Fees Act. No part of the proviso, therefore, applies to a suit for the possession of lands in a *talukdari* village, such a suit should be valued according to sub-clause (d) of cl. V. of s. 7 of the Court Fees Act.—*Ala Chela v. Oghadbhai Thakera* (11 Bom. 541, F. B.).

Talukdari village.—The Court-fee on a suit for possession of a part of a Talukdari village must be calculated according to cls. 1 and 3 of the proviso for the Bombay Presidency in s. 7, cl. V.—*Jesalsing v. Dipsang* (P. J., 1888, p. 164).

(e).—

House.—

In a suit for possession of land, and demolition of buildings erected thereon, held, that in estimating the value for the purposes of the Court Fees Act or the Bengal Civil Courts Act, the value of the buildings, which might have to be demolished, should not be taken into account.—*Jogal Kishor v. Tale Singh and Bindeshri Chaubey v. Nandu* (4 All. 320, F. B.; s. c., W. N., 1882, p. 44).

Paramba (garden).—

See *Audathodan Moidin v. Pullambath Mammally* (12 Mad. 301, F. B.), on the preceding page.

Bagayat land.—

See *Raghu v. Yellapa* (P. J., 1884, p. 150), ante, p. 29.

Reductions of duty.—

See I. G. Notn., No. 4650, 10th Sept 1889, cls. (18) and (23), Appendix C, post.

Clause VI.—

Suit for pre-emption—Valuation.—

The Bill, as first amended, imposed a charge of Rs. 10 on suits relating to rights of pre-

emption.....The effect of that provision would be to reverse the existing practice, under which such suits were assessed according to the value of the property regarding which a right of pre-emption was claimed. Further consideration of the matter had led to the conclusion that this practice was in accordance with the principle adopted throughout the Bill, that the valuation of suits should be regulated by the value of the subject-matter actually in dispute, and should therefore be maintained. In the cases referred to the subject-matter was in fact the possession of the property which the litigants claimed a right to purchase, and the application of the above-mentioned principle to such cases was in no way barred or affected by the circumstances that one or other of the disputing parties had to pay a certain amount to some third person as a preliminary condition to obtaining the actual possession of the property to which the suit had reference.—*Proceedings of the Legislative Council* (I. G., Supplement, 12th March 1870).

Appeal as to the amount to be paid by the pre-emptor.—Where in a suit to enforce the right of pre-emption, a decree was passed against the vendees (defendants), and they appealed from the same on the ground that they were entitled to receive from the plaintiffs (pre-emptors) a sum larger than that found by the Court of first instance to have been the purchase-money, and also that the plaintiffs had estopped themselves from asserting the right by refusing to purchase, held, that the nature of the suit was not changed in appeal, and that, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption, the value of which, for the purposes of Court-fee, was to be determined in manner directed by s. 7, cl. VI. of the Court Fees Act (VII. of 1870). *Rana Lakhn Rai v. Bandon Rai* (Legal Remembrancer, H. C. Series, 162) distinguished. Where an appeal is preferred in a suit to pre-empt, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter what other pleas may be taken, the value of the subject-matter in dispute for the purposes of the Court Fees Act, must be determined as in terms provided in Art. VI. of s. 7 of the Act. Where the question in appeal relates solely to the amount to be paid by the pre-emptor, the Court-fees should be calculated *ad valorem* on the difference between the amounts alleged as the sale-price on the one side and the other.—*Hafis Ahmad v. Sobha Ram* (6 All. 488; s. c., W. N., 1884, p. 179).

Suit for pre-emption of separate plots of land not separately assessed.—See *Reference under the Court Fees Act, 1870, s. 5* (16 All. 493), *ante*, p. 30.

For a decision under the earlier Act see *Anjud Sing v. Depun Sing* (3 B. L. R., Ap., 143; s. c., 14 W. R. 230, note).

Valuation for jurisdiction.—

In a pre-emption suit the subject-matter is the right of pre-emption, the value of

which, and not that of the property itself, determines the question of jurisdiction under s. 20 of Act VI. of 1878 (Bengal Civil Courts).—*Narain Singh v. Rash Behari Singh* (13 Cal. 255).

Clause VIII.—

Application of the clause.—

A person whose property was attached was not compelled to resort, in the first instance, to an application under s. 246 of the late Civil Procedure Code (VIII. of 1859). There was nothing to prevent him from commencing his litigation by a regular suit, if such was his pleasure. Clause VIII. of s. 7 of the Court Fees Act (VII. of 1870) would apply to such a suit. The language of that section is not limited to suits to set aside any special kind of attachment of land. It is large enough to include suits brought in pursuance of the permission given by s. 246 of Act VIII. of 1859, to set aside attachments on land as well as other suits for that purpose brought independently of that section. *Quere*.—Whether that clause includes all suits to set aside attachments upon land, or all such suits except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent or of a Revenue Court.—*Dayachand v. Hemchand Dharamchand* (4 Bom. 515, F. B.).

Suit to restore an attachment.—

This clause does not apply to a plaint or memorandum of appeal in a suit brought under s. 246 of Act VIII. of 1859 (Civil Procedure) to restore an attachment upon a house which has been removed at the instance of an intervenient under that section.—*Ibid*.

Land.—Property other than land.—

The term "land" in cl. VIII., s. 7 of the Court Fees Act does not include a house.—*Ibid*.

Suits to set aside an attachment of land, of an interest in land or revenue are to be valued under cl. VIII. at the amount for which the land or interest was attached; provided that in no case is a higher fee to be levied than would be payable if the suit were for possession. As regards property other than land, or interest in land or revenue, there has been a conflict of decisions; when a party having preferred a claim or made an objection to property in execution of decree, and failed, brings a suit under s. 283 of the Code of Civil Procedure to establish his right to the property attached, his plaint should, according to the Bombay High Court, be treated as falling under Art. 17 (I.) of Sch. II., chargeable with a fee of ten Rupees (9 Bom. 20; 10 Bom. 610); but according to the Calcutta High Court (13 Cal. 163), and the Punjab Chief Court (Punj. Rec., No. 80 of 1886), as chargeable *ad valorem* under s. 7, cl. IV. (c).—*Punj. Stamp Manual*, 1888, pp. 73-4, *para*. 111.

See notes under s. 7, cl. IV. (c), *ante*, and Sch. II., Art. 17, cls. (I.) and (III.), *post*.

Valuation for Court-fees.—

The meaning of cl. VIII., s. 7 of the Court Fees Act (VII. of 1870), is that a person suing to set aside an attachment on land shall in no case be called upon to pay a *higher* fee than he would have to pay if he were suing for possession of the land. Accordingly in a suit for setting aside summary attachment under Bom. Act I. of 1865 (Survey and Settlement Act, now repealed by the Bombay Land Revenue Code V. of 1879) placed by the Collector on land held on a settlement for a period not exceeding thirty years, the value was held to be five times the assessment, and the stamp-duty calculated upon it irrespective of the actual market-value, or the amount for which the land was attached.—*Collector of Thana v. Dadabhai Bomanji* (1 Bom. 352).

The valuation for stamp-duty of a suit brought by the trustees to whom property was assigned by an insolvent for the benefit of his creditors, to set aside an attachment by a judgment-creditor, should be calculated on the value of the lien claimed by the judgment-creditor.—*Cecil Stephenson v. Baumgartner* (3 Agra 104).

Valuation for jurisdiction.—

In a suit to have it declared that certain property valued at Rs. 400 was liable to sale in execution of the plaintiff's decree for Rs. 1,500, held, that in this case the value of the property determined the jurisdiction; that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif. *Gulsari Lal v. Jadaun Rai* (2 All. 799) distinguished.—*Durga Prasad v. Rachla Kuar* (9 All. 140).

When the only parties to a suit under s. 283 of Act No. XIV. of 1882 are the execution-creditor or his representative on one side, as plaintiff or as defendant, and the claimant-objector or his representative on the other, and the sole question in the suit between such parties is the question whether the property attached in execution of the decree of the execution-creditor is or is not liable to be attached and sold in execution of the decree of the execution-creditor, the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII. of 1887 (Bengal, N.-W. P., and Assam Civil Court Act), which by cl. (13) of s. 3 of Act No. I. of 1887 (General Clauses), means "the amount or value of the subject-matter of the suit," is the value of the property sought to be sold in execution of the decree, when the amount of the decree exceeds the value of the property, and the value of so much of the property sought to be sold as will on a sale, satisfy the amount sought to be realized by the sale, when the value of the property attached exceeds the amount sought to be realized, and that in such latter case the amount which it is sought to be realized by a sale under the decree may be taken as the value of that portion of the property the sale

of which will theoretically, although possibly not in practice, be sufficient to satisfy the amount sought to be realized by a sale. But when in a suit under s. 283 of Act No. XIV. of 1882, the claimant-objector makes the judgment-debtor or his representative a party as defendant to the suit, the property attached must be regarded as the subject-matter of the suit, and the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII. of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of property in execution of the decree. *Gulsari Lal v. Jadaun Rai* (2 All. 799), *Durga Prasad v. Rachla Kuar* (9 All. 140), *Kishnama Chariar v. Srinivasa Ayyangar* (4 Mad. 339) and *Modhusudan Koer v. Rakhai Chundar Roy* (15 Cal. 104), distinguished. *Mahabir Singh v. Behari Lal* (18 All. 820) and *Madho Das v. Ramji Patak* (16 All. 286) referred to.—*Dwarkan Das v. Kameshar Prasad* (17 All. 69).

Clause IX.—

Principal money expressed to be secured.—

Duty not to be calculated on market-value.—The stamp-duty payable under Soh. B of Act X. of 1862 on a suit to redeem mortgaged land paying revenue to Government should be calculated on the sum for which the land is mortgaged, and not on the market-value of such land. *Semble.*—That an error in the valuation of the plaintiff's claim, on account of which error the defendant is compelled to pay more costs than he would otherwise have to pay, is not in general a ground of special appeal.—*Nandram Sundarji Naik v. Balaji Vitthal* (5 Bom. H. C., A. C., 158).

See *Ajoodya Chowbey v. Daibee Singh* (4 Agra 5), under cl. XI., *post*.

In a suit for the redemption of a kanom the institution-fee must be computed on the kanom debt as it originally stood.—*Reference under Court Fees Act, s. 5* (14 Mad. 480).

Redemption suit.—*Claim by mortgagor for rent in the same suit.*—S. 17.—A suit to redeem a mortgage for Rs. 3,500, and to recover a certain sum on account of rent, was dismissed, so far as the prayer for redemption was concerned, and also a part of the claim for rent was disallowed. It did not appear that the arrears of rent were intended to be set off against the mortgage-debt. The plaintiff appealed. Held, that the Court-fee should be computed on the principal amount of the mortgage-debt and on the claim which had been disallowed on account of rent.—*Rama Varma Rajah v. Kadar* (16 Mad. 415).

Payments not to be deducted.—In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account, in taking which the arrears of rent should be deducted from the mortgage amount; Held, that the Court-fee should be computed according to the *princi-*

pal sum expressed to be secured by the mortgage.—*Eacharan Patter v. Appu Patter* (19 Mad. 16).

Foreclosure suit.—Suit against the heir of mortgagor for recovery of the mortgage-debt by sale of mortgaged and other property.—See *Kashinath Ballal v. Ganpatrao Amriteswar Joshi* (18 Bom. 696), *ante*, p. 18.

Suit by purchaser of a fractional share of equity of redemption.—*Appeal.*—The Court-fee on an appeal by the purchaser of a share of an equity of redemption in a suit to redeem his share is to be calculated under s. 7, cl. IX.—*Mahadaji v. Balkrishna* (P. J., 1882, p. 106).

Redemption suit.—A suit for recovery of property mortgaged from a mortgagee is one for redemption and comes within s. 7 (IX.), the issues settled being whether the mortgage money was paid off and, if not, what amount is remaining due.—*Maruti v. Shripati* (P. J., 1889, p. 58).

Amount secured.—Separate appeals presented by each of two appellants.—

Full duty leviable on each.—A decree having been given by the Lower Courts in a redemption-suit, directing that the mortgaged property should be redeemable on payment of the amount expressed to be secured by the mortgage-deed, *vis.*, Rs. 1152-15-4, to the defendants—*vis.*, Rs. 568-9-8 to the defendant Umarkhan, and Rs. 584-5-8 to the defendant Moro and two others—appeals were preferred to the High Court by Umarkhan and Moro, each of them presenting a separate memorandum of appeal. A question arose as to what Court-fee should be levied on them. On reference by the Taxing Officer of the Court, *held*, that the Court-fees to be computed upon each memorandum of appeal was, under s. 7, cl. IX. of the Court Fees Act (VII. of 1870), to be according to the principal money expressed to be secured by the deed of mortgage, *vis.*, Rs. 1,152-15-4.—*Umarkhan v. Mahomedkhan* (10 Bom. 41).

See also *Rajgopal v. Ramkrishna* (10 Bom. 44-5).

Amount secured.—Suit for the recovery of a portion of the property mortgaged.—

Duty to be levied on proportionate amount of debt.—In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property, and, as regards the portion of the property sued for, "the principal money expressed to be secured" must be taken to be the proportionate amount of the debt for which such portion of the property is liable.—*Balkrishna Dhondo v. Nagvekar* (6 Bom. 324).

Followed in *Amanat Begam v. Bhajan Lal* (8 All. 438, F. B.; s. c., W. N., 1886, p. 146).

Suit for redemption of one-third of the mortgaged property.—A deed of mortgage was exe-

cuted by P. T. and S for Rs. 4,000. A, the purchaser of the share of S brought a suit for recovery of possession of one-third of the mortgaged property against the mortgagees who had purchased the share of P and T, the other mortgagors. *Held*, by the Full Bench, with reference to s. 7, Art. IX. of the Court Fees Act (VII. of 1870) that the defendants (mortgagees) having bought up the equity of redemption of two of the mortgagors, and *pro tanto* extinguished the mortgage-debt, and so by their own act empowered the plaintiff to sue for redemption of one-third of the property, the principal money now secured as between them and the plaintiff must now be regarded as one-third of the original mortgage amount namely, Rs. 1338-5-4, more particularly as fiscal enactments should as far as possible, be construed in favour of the subject. *Balkrishna Dhondo v. Nagvekar* (6 Bom. 324) referred to. *Held*, also, with reference to the terms of s. 20 of the Bengal Civil Courts Act (VI. of 1871), that the "subject-matter in dispute" in suits of this kind was the amount of the mortgage-debt and the mortgagees' rights which were sought to be paid off; that from the terms of the plaint it was obvious that in the present case the subject-matter in dispute was Rs. 1,338-5-4, the one-third of the original mortgage-sum of Rs. 4,000; and that it was therefore beyond the limits of the Munsif's pecuniary jurisdiction.—*Amanat Begam v. Bhajan Lal* (8 All. 438, F. B.; s. c., W. N., 1886, p. 146).

Redemption of a portion of property mortgaged.—*Appeal.*—In a suit in the Court of a Subordinate Judge to redeem certain land on payment of Rs. 1,625, being a quarter of a debt for which it had been mortgaged together with other land, a decree was passed for redemption of part of the land, but the Court held that the plaintiff had not established his right to the rest. The plaintiff appealed to the High Court paying *ad valorem* Court-fee computed on the value of the land exonerated only. *Held* (1) that the *ad valorem* Court-fee should be computed on one-fourth of the mortgage-debt; (2) that the appeal lay to the District Court; and since Act VII. of 1887, s. 11 did not apply to the case the petition of appeal should be returned for presentation in that Court.—*Vasudeva v. Madhava* (16 Mad. 326).

Amount secured.—Redemption decree conditional on payment of a certain sum.—*Appeal.*—

Appeal by mortgagor.—*By mortgagee.*—Where a mortgagor sues for redemption on the allegation that the mortgage-debt has been satisfied and a decree for redemption is passed on payment of a certain amount and the mortgagor appeals against the amount he is ordered to pay, the Court-fee payable on the memorandum of appeal must, under s. 7, cl. IX., of Act VII. of 1870, be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due. *Sembla.*—If the decree had allowed redemption on payment

of a certain sum, and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum, the Court-fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due.—*Pirbku Narain v. Sita Ram* (13 All. 94; s. c., W. N., 1890, p. 231).

Redemption suit.—Appeal as to an item in the accounts.—

Where an appeal in a redemption suit relates only to an item in the accounts, the appeal need only be stamped so as to cover such item.—*Faki Mahomed v. Mana Kesajidat* (P. J., 1883, p. 39).

Redemption suit.—Mortgagor appealing or disputing accounts taken below.—

Where a mortgagor in a suit for redemption valued the suit at Rs. 375, the mortgage amount, stating that on an account being taken a large sum would be found due to him from the mortgagee and the Court decreed redemption on the mortgagor paying Rs. 1,821 to the mortgagee, and the mortgagor appealed on the ground that the accounts had not been properly taken, and that really the mortgage was indebted to him, *held*, that the appeal was properly valued at Rs. 375, the mortgage amount.—*Gopal v. Gangaram* (P. J., 1891, p. 218).

Reduction and remission of duty.—

See L. G. Notn., No. 4650, 10th Sept. 1889, cl. (29), Appendix C, *post*.

Valuation for the purpose of jurisdiction.—

Suit for possession after foreclosure.—Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit, in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s. 7, cl. 9.—*Ahalya Bai Debia v. Shama Churn Bose* (1 C. L. R. 473).

Amount spent in improvements.—*Per Curiam* (Turner C. J., and Muttusami Ayyar, J., dissenting).—Where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining the "value of the subject-matter of the suit" for the purposes of jurisdiction under s. 12 of the Madras Civil Courts Act (III. of 1873). *Per Turner, C. J.* (Muttusami Ayyar, J., concurring).—By the custom of Malabar a condition is attached to all kanam demises that the mortgagor shall pay the value of improvements made by the mortgagee during the term of the demise before he can redeem, and the repayment of the sums spent in improvements is thus secured by the mortgage in the same manner as the repayment of the principal advanced, and must be calculated in determining the value of the

subject-matter of the suit for the purpose of jurisdiction.—*Zamorin of Calicut v. Narayana* (5 Mad. 284, F. B.).

Jurisdiction.—*The Madras Civil Courts Act, s. 14.*—The Madras Civil Courts Act (III. of 1873), s. 14, enacts that "when the subject-matter of any suit or proceeding is land, a house or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870, section 7, clause 5." But it has been *held* by the Madras High Court that redemption suits are not governed by s. 7, cl. V., but by s. 7, cl. IX. of the Court Fees Act, for the purposes of jurisdiction. See the Full Bench ruling reported at 5 Mad. 287-9.

Redemption suit.—Value of subject-matter in dispute.—The plaintiffs sued for the possession of certain immoveable property, alleging that they had mortgaged such property to the defendants, and that the mortgage-debt had been satisfied out of the profits of the property. The defendants set up a defence to the suit which raised the question of the proprietary right of the plaintiffs to the property. The value of the mortgagees' interest in the property was below Rs. 5,000; the value of the mortgaged property exceeded that amount. On appeal to the High Court from the original decree of the Subordinate Judge in the suit, it was contended that the appeal from that decree lay to the District Court, and not to the High Court. *Held*, that the "subject-matter in dispute," within the meaning of s. 22 of Act VI. of 1871 (Bengal Civil Courts), was the mortgage and the mortgagees' rights under it, and that, the value of this being only Rs. 2,000, the appeal should have been preferred to the District Court. Second Appeal No. 1039 of 1877 (unreported; decided the 18th January 1878) dissented from.—*Gobind Singh v. Kallu* (2 All. 778).

Followed in *Bahadur v. Nawab Jan* (3 All. 822).

Suit for redemption.—Valuation.—The integrity of a joint usufructuary mortgage having been broken in consequence of the mortgagee having purchased the right of several of the mortgagors, one of the mortgagors sued in the Munsif's Court to recover his share of the mortgaged property, alleging that the mortgage had been redeemed. The value of the mortgagee's right, *qua* such share, was under Rs. 1,000. The mortgagee set up as a defence to such suit that a bond, under which a sum exceeding Rs. 1,000 was due, had been tacked to the mortgage, and that until such sum had been satisfied, the plaintiff could not recover possession of his share. *Held*, on the question whether the Munsif had jurisdiction, that the value of the subject-matter of the suit was the value of the mortgagee's right, *qua* the plaintiff's share; and as the value of such right did not exceed Rs. 1,000, even if it were held that the mortgage property was further incumbered with such bond, such suit was cognisable in the

Munsiff's Court. The principle laid down in *Gobind Singh v. Kallu* (2 All. 778) followed. —*Bahadur v. Nawab Jan* (3 All. 822).

See also *Amanat Begam v. Bhajan Lal* (8 All. 438, F. B., s. c., W. N., 1886, p. 146), *ante*, p. 34.

Suit for redemption.—Valuation.—The purchaser of the equity of redemption of certain land sued to redeem the same. He made the mortgagor and vendor of the land a *pro forma* defendant. *Held*, that the value of the subject-matter of the suit was not the market-value of the land, but the amount of the mortgage-money. —*Kubair Singh v. Atma Ram* (5 All. 832).

Valuation of a suit for redemption.—The valuation of a suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage, or claimed on it by the mortgagee. It is that amount and the right connected with it which is the usual subject of contention in a mortgage suit. *Per* Birdwood, J.,—The rules laid down in the Court Fees Act (VII. of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction. —*Rupchand Khemchand v. Balwant Narayan* (11 Bom. 591).

Followed in *Amrita bin Bapuji v. Naru bin Gopalji Shamji* (13 Bom. 489).

Redemption suit.—Appeal.—Jurisdiction.—In a redemption suit the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied, and the mortgagee does not say what is claimed in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. —*Amrita bin Bapuji v. Naru bin Gopalji Shamji* (13 Bom. 489).

Clause X.—

The Bill as first amended, imposed a fixed charge of Rs. 10 on suits relating to the specific performance of a contract.....In respect of the various descriptions of contracts forming the subject of a suit to enforce specific performance it could not correctly be said that the litigated matter had no appreciable market-value. The fixed charge formerly proposed was, therefore, thought inapplicable to this class of suits, and provision was made in s. 7, cl. X. of the amended Bill for substituting an *ad valorem* rate, regulated by the estimated value of the interest involved in the contract. —*Proceedings of the Legislative Council* (I. G., Supplement, 12th March 1870).

(a).—

Suit for specific performance.—Full Court-fee not paid.—The mother and guardian of a Hindu minor entered into a contract for the sale of his land. The vendee sued the minor by his mother and guardian *ad litem* for

specific performance of the contract and for possession. It was found that the contract was binding on the minor. *Held*, that the suit was maintainable. The plaintiff not having in the first instance paid the full Court-fee, he should have been called upon to do so. As this was not done, the Court of first appeal was not in error in entertaining the appeal which was preferred by the plaintiff; but he should have passed no decree until the fees due had been paid; and if they were not paid, he should have dismissed the suit. —*Krishnasami v. Sundarappayyar* (18 Mad. 415).

Suit for specific performance of a contract of guarantee and compensation for breach.—See *Chunibhai v. The Secretary of State for India in Council* (P. J., 1890, p. 204), *ante*, p. 19.

Clause XI.—

Application for the assistance of Collector in ejecting a ryot.—

Act XXVI. of 1867.—An application under s. 25, Act X. of 1859, for the assistance of the Collector in ejecting a ryot, is not a suit; and therefore the Revenue Courts should receive such petition engrossed on a stamp-paper of the value of eight annas. —*Pyari Mohan Mookerjee v. Kina Beva* (2 B. L. R., A. C., 226; s. c., 11 W. R. 90).

Decree for ejectment and mesne profits.—Appeal.—

A memorandum of appeal from a decree directing ejectment and awarding mesne profits is chargeable with Court-fees calculated both on the land and on the mesne profits. —*Brahmayya v. Lakshminarasimhaiah* (16 Mad. 310).

Suit to eject a tenant-at-will.—

In a suit to eject a defendant as being a tenant-at-will, the Court-fee upon the plaint or memorandum of appeal is 8 annas under Sch. II., cl. 5 of Act VII. of 1870. Cl. XI. (d) of s. 7 of that Act applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit. —*Nurjahan v. Marfan Mundul* (11 C. L. R. 91).

See notes under Sch. II., Art. 5, *post*.

Suit to eject a tenant.—

See *Ram Raj Tewari v. Girnandan* (15 All. 68; s. c., W. N., 1892, p. 240), *ante*, p. 29.

Where a landlord claims to eject a tenant, he claims to recover the tenant rights in the holding, and the stamp-duty chargeable on the plaint should be determined with reference to the market-value of that right only. *Held*, further, that a defendant is legally chargeable with that amount of stamp-duty which can legally be demanded from the plaintiff, and not with the excess which he was obliged to pay through a mistake in law of the Court. —*Ajoodya Chowbey v. Daies Singh* (4 Agra 5).

See *Nandram Sunderjee v. Balaji Vishal* (5 Bom. H. C., A. C., 158), *ante*, p. 38.

8. The amount of fee payable under this Act on a memorandum of

Fee on memorandum of appeal against order relating to compensation.

appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes,* shall be

computed according to the difference between the amount awarded and the amount claimed by the appellant.

Appeal against an award under the Land Acquisition Act.—

An appeal against an award made by the District Judge under the Land Acquisition Act I. of 1894, was filed in the High Court, the appeal memorandum bearing a Court-fee stamp of Rs. 10 only, and was admitted by the Registrar, no question having been raised as to the sufficiency of the stamp. On the appeal

having been posted for hearing it was objected on the part of the respondent that the stamp paid was insufficient. *Held*, that the appeal memorandum should have borne an *ad valorem* stamp under Court Fees Act, s. 8, and that there having been no decision by the taxing officer under s. 5, it was open to the respondent to raise the objection on appeal at the hearing.—*Kasturi Chetti v. Deputy Collector, Bellary* (21 Mad. 269).

9. if the Court sees reason to think that the annual net profits or the market-value of any such land, house, or garden

Power to ascertain net profits or market-value.

as is mentioned in section 7, paragraphs V. and VI., have or has been wrongly estimated, the Court

may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Act XXVI. of 1867.—

Sch. B., Art. 11, note (a).—On a dispute arising as to the proper valuation of a suit, the Court may on the application of either party issue a commission, and make an enquiry into the market-value or the net profits of the property in dispute. The final decision as to the proper valuation is vested in the Court which hears the suit.—*Uma Sankar Roy Chowdhry v. Sayed Mansur Ali Khan Bahadur* (5 B. L. R., Ap., 6; s. c., 13 W. R. 326).

Cl. 3, note (B), of Art. 11, Sch. B. of Act XXVI. of 1867, which authorizes a Court to direct a local or other investigation as to the market-value or annual profits of any property, does not restrict the Court to an Ameen's report in the matter, but allows the Court the benefit of the Ameen's investigation as is provided for in other matters in the Code of Civil Procedure.—*Modhoooodun Chukerbuty v. Ryemonee Dassees* (13 W. R. 415).

In cases where, for the purpose of stamping an appeal it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the Registrar a memorandum giving an estimate of the market-value, and the data on which it has been calculated. If the Registrar consider the estimate clearly insufficient, the

Court will issue a commission to ascertain the proper market-value. The provisions of Sch. B. of Act XXVI. of 1867 considered.—*Ex parte Moones Rangappen* (3 Mad. H. C. 352).

Act VII. of 1870.—

This section as originally drawn followed the provision of the existing law (i. e., Act XXVI. of 1867) on this subject; but the Committee were strongly of opinion that local investigation for the purpose of valuing a suit should be discouraged as much as possible, as, in effect, they entailed on the parties to the suit all the trouble and expense of an extra suit, merely to determine the question of the amount due to the revenue. They proposed, therefore, to substitute words, the effect of which would be to require the Court to determine, in each case, whether such local investigation was necessary or expedient, instead of directing the enquiry to be made as a matter of course on the mere requisition of a party to the suit.—*Proceedings of the Legislative Council* (I. G., Supplement, 26th Feb. 1870).

Burden of proof.—

When the defendant asserts that a suit is over-valued, the burden of proving the truth of his assertion lies on him.—*Uma Sankar Roy Chowdhry v. Syad Mansur Ali Khan Bahadur* (5 B. L. R., Ap., 6; s. c., 13 W. R. 326).

* See Act X. of 1870, s. 35, now repealed by Act I. of 1894, s. 54.

In a suit for possession by an auction-purchaser where plaintiff valued his claim at what he paid for the property, *held*, that the valuation was *prima facie* not incorrect, and until rebutted by evidence and the result of a proper inquiry, should be accepted as correct. Where a valuation is doubted, an enquiry should be instituted under Act XXVI. of 1867.—*Mussamut Soobudra v. Raja Ram Prokash Singh* (16 W. R. 5).

See also *Mussamut Dhunnoo v. Damodar Dass* (2 N.-W. P. 177), *ante*, p. 17.

Sections 9, 10, 11 and 28.—

Ss. 9, 10 and 11 of the Court Fees Act are not in conflict with s. 28; nor are ss. 9, 10, 11, and 28, read together, in conflict with s. 54 of the Civil Procedure Code.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F.B.; s. c., W. N., 1890, p. 39).

10. I. If, in the result of any such investigation, the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion refund the excess paid as such fee; but if the estimation has been insufficient the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

II. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

III. [Repealed by Act XII. of 1891, first Schedule.]

Demand of additional Court-fee.—Dismissal.—Application of the section.—

Civil Procedure Code, s. 54.—Section 54 of Act X. of 1877, which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of s. 10 of the Court Fees Act, which directs that a suit shall be dismissed in a certain case is not susceptible of restriction to any particular stage.—*Valya Kessava Vadhyar v. Suppan Nair* (2 Mad. 308; s. c., 4 Ind. Jur. N. S., 286).

A plaint can only be rejected under s. 54 of Act X. of 1877 before it is registered.—*Habibul Hossain v. Mahomed Resa* (8 Cal. 192; s. c., 10 C. L. R. 385).

But *held* in *Kishore Singh v. Sabdal Singh* (12 All. 553; s. c., W. N., 1889, p. 185), that s. 54 of the Civil Procedure Code may be applied at any stage of a suit.

Order requiring additional Court-fee subsequent to decree.—A judge after disposing of an appeal on the 1st March 1883, again took it up, and on the 21st March 1883, directed the appellant to pay additional Court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional Court-fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to and carried into effect, the subsequent order of the 21st March and the 2nd May. *Held*, per Mahmood, J., that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment, that the order of the

21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was, therefore, liable to correction in second appeal under s. 584 of the Civil Procedure Code. The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court-Fees Act (VII. of 1870), read with cl. 2 of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by s. 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per* Oldfield, J., that the Court had power to make the order it did, inasmuch as the collection of Court-fees was no part of a Judge's functions in the trial of a suit which could not be said to have ceased with its termination; and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.—*Mahadei v. Ram Kishore Das* (7 All. 523; s. c., W. N., 1885, p. 140).

See also *Krishnasami v. Sundarappayyar* (18 Mad. 415), *ante*, p. 36.

Court Fees Act, ss. 9, 10, 11 and 28.—Civil Procedure Code, s. 54.—

Ss. 9, 10 and 11 of the Court Fees Act are not in conflict with s. 28; nor are ss. 9, 10, 11 and 28, read together in conflict with s. 54 of the Civil Procedure Code. Cases within s. 10 or s. 11 of the Act would arise only where, through mistake or inadvertence of the Court, a plaint which subsequently was discovered to be insufficiently stamped had been received, filed, or used in the Court; and cls. (a) and (b) of s. 54 of the Code are similarly related to s. 28 of the Act, and were not intended to cut down or limit its provisions.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

Court to fix time for payment.—

When an appellate Court returns an insufficiently stamped memorandum of appeal in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied.—*Shew Pratab Narain Singh v. Shoo Golum Singh* (2 All. 875).

See also notes under s. 12, *post*.

Time fixed for payment.—Extension of time.—

The original Bill contained no effectual provision as to the consequence of the non-payment of the additional fee discovered to be due by the results of the local enquiry as to market-value of the litigated property. The amended Bill empowered the Court to fix the time within which such additional fee must be paid and dismiss the suit in default of such payment.—*Proceedings of the Legislative Council* (L. G., Supplement, 26th Feb. 1870).

Held, in a case where amendment of plaint was ordered to be made before a certain date, that, although the time originally fixed had expired, the Judge had a discretion to extend the time.—*Bhagwandas Bagla v. Haji Abu Ahmed* (16 Bom. 268).

Held, that it is competent to a Court which has made an order under s. 10, cl. II. of Act No. VII. of 1870, for the payment of an additional Court-fee, to enlarge, either before or after its expiration, the time limited for the payment of such additional fee. *Budri Narain v. Mt. Shoo Koor* (L.R., 17 L.A. 1) and *Bhagwandas Bagla v. Haji Abu Ahmed* (16 Bom. 268) and s. 549 of the Code of Civil Procedure, referred to.—*Chunni Lal v. Ajudhia Prasad* (19 All. 240; s. c., W. N., 1897, p. 40).

See also notes under s. 12, *post*.

Dismissal of suit.—Res judicata.—

The "dismissal" of a suit under s. 10 or s. 11 of the Court Fees Act has the same effect as that provided by s. 56 of the Civil Procedure Code in cases of "rejection" of a plaint under s. 54.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

See s. 56 of the Code of Civil Procedure (XIV. of 1882).

The purchaser of certain immoveable property in execution of a decree sued for possession of the same. The suit was dismissed "in its present form" upon two grounds, first with reference to s. 10 of the Court Fees Act (VII. of 1870), that the suit was under-valued and the plaintiff had failed to pay, within the time fixed, additional Court-fees required by the Court, and, secondly, for mis-joinder. The purchaser subsequently brought a second suit. *Held*, that the dismissal of the former suit was not, under the circumstances, a decision within the meaning of s. 13 of the Civil Procedure Code, such as could bar the second suit by way of *res judicata*. *Per Mahmood J.*—The object of s. 10, and indeed of the whole of the Court Fees Act, is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens or encroach upon, or qualify the rights of the subject, must be strictly construed, applies with special force to such provisions of the Act as provide a penalty, whatever its nature may be. S. 10 is simply a penal clause to enforce the collection of the Court-fees, and dismissal of a suit under its provisions cannot operate as *res judicata*.—*Muhammad Salim v. Nabian Bibi* (8 All. 282).

Rejection of suit in appeal.—

The plaintiff sued four persons to recover, with arrears of rent, possession of three parcels of land, and obtained a decree in the Court of District Munsif. The suit was valued at Rs. 489-8-0. Defendant No. 4, who claimed to be entitled as *jenmi* to one of the parcels, preferred an appeal. The District Judge held that the suit should have been valued at Rs. 1,164-8-0, and he made an order that additional Court-fees should be paid accordingly. The order not having been complied with, he made an order—"Original suit rejected." He subsequently referred the appeal for disposal to a Subordinate Judge who accordingly passed a decree, allowing the appeal of defendant No. 4 with costs. On appeal against the above order and decree, *held*, that the order of the District Judge was irregular, and the appeal should be restored to the file of the Subordinate Judge to be disposed of according to law.—*Kerala Varma v. Chadayan Kutti* (15 Mad. 181).

See also *Kammathi v. Kunhamed* (15 Mad. 288), *ante*, p. 23, and *Syed Wajid Ali Khan v. Lala Hanuman Prasad* (4 B. L. R., A. C., 189), under s. 12, *post*.

Refund of excess stamps.—

Where excess stamps had been filed in consequence of an over-valuation of the appeal, the surplus amount was ordered to be refunded.—*In the matter of G. H. Grant* (14 W. R. 47).

Dismissal of suit.—Appeal.—

Where the question is whether the suit is one admitting of valuation, an appeal would lie from an order of dismissal under s. 10, Court Fees Act.—*Bhaskar v. Shitaram* (P. J., 1887, p. 36).

11. In suits for mesne profits, or for immoveable property and mesne

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Application of the section.—

Interest on decree.—The Court Fees Act (VII. of 1870), s. 11, is not applicable to interest accruing upon a decree in a suit which is neither for mesne profits, nor for immoveable property, nor for an account, but simply an action for money lent.—*Krishnarav v. Antaji Virupaksha* (12 Bom. H. C., A. C., 227).

Mesne profits from institution of suit till property is restored.—

The plaintiff in his plaint prayed for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff, he applied, in execution of the decree, to have the amount of the mesne profits determined, which being done a question arose as to whether the plaintiff could proceed to further execute his decree without paying the Court-fee on the amount so awarded in execution. *Held*, that no Court-fee was required. S. 11 of the Court Fees Act (VII. of 1870) applies to a claim for mesne profits for which an amount can be and has been claimed by the plaintiff and in respect of which some fee has been actually paid.—*Ramkrishna Bhikaji v. Bhimbai* (15 Bom. 416).

Followed in *Vithal Hari Athavle v. Govind Vasudeo Thosar* (17 Bom. 41).

Mesne profits.—*Appeal.*—As regards mesne profits accruing subsequently to the date of the suit, where the decree directs the amount of such mesne profits to be determined in execution, it is not the practice to require an appellant appealing as to such mesne profits, to affix an additional stamp to his memorandum of appeal so as to cover the amount of such profits. Like interest awarded *pendente lite* and costs, they have always been excluded in determining the stamp on an

appeal against the whole decree. But as to the mesne profits claimed prior to the institution of the suit, the memorandum of appeal must bear the same stamp as the plaint.—*Rudra v. Radhabai* (P. J., 1888, p. 83).

Mesne profits.—*Appeal.*—In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit. The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal for the purpose of the Court Fees Act, nothing was included on account of the mesne profits. *Held*, that no stamp-duty was payable in respect of the mesne profits subsequent to the institution of the suit.—*Maiden v. Janakiramayya* (21 Mad. 371).

But see the following case:—

Compensation for use and occupation.—The plaintiffs sued in virtue of a conditional sale which had been foreclosed for (i.) possession of a house, (ii.) compensation, in nature of rent, for its use and occupation from the date of foreclosure to the date of suit, and (iii.) like compensation from the latter date to the date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale, but before the same was foreclosed. *Held* (Spankie, J., dissenting), that the suit embraced "distinct subjects" within the meaning of s. 17 of the Court Fees Act, 1870, and the plaintiff and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable. *Per* Spankie, J.—That cl. II. s. 7, of the Court Fees Act, did not apply to the third claim,

nor was it one for money within the meaning of clause I. of that section, but one for which s. 11 of that Act provided. *Per* Oldfield, J.—That Court-fees were leviable in respect of the third claim with reference to cl. I., s. 7, and s. 11 of the Court Fees Act.—*Chedi Lal v. Kirath Chand* (2 All. 682, F. B.).

Part-execution of decree.—Full payment not necessary.—Meaning of "suit."—S. 17.—

The plaintiff sued the defendant to recover possession of a house and for mesne profits. In the same suit he also claimed certain account-books and documents from the defendant. In paying Court-fees he estimated the mesne profits at Rs. 151, and paid in that amount. He obtained a decree, and the amount of mesne profits awarded to him was Rs. 3,349-13-3. The decree further directed that possession of the house should be given to him, and that the books and documents should be handed over to him. He now applied for execution of that part of the decree which directed the delivery of the house and of the account-books and other documents. The defendant contended that under s. 11 of the Court Fees Act (VII. of 1870), the plaintiff was not entitled to execution of any part of the decree until he had paid the proper Court-fees on the sum awarded as mesne profits, viz. Rs. 3,349-13-3. *Held*, that the plaintiff might obtain execution of that part of the decree which ordered delivery of the house and books and documents without paying the fees payable on the amount awarded for mesne profits. S. 11 and s. 17 of the Court Fees Act (VII. of 1870) ought to be similarly construed; and the language of the latter section, which deals with multifarious suits shows that for the purposes of the stamp revenue, such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them. In applying s. 11 to such suits in order to give a harmonious construction to the Act as a whole, the terms "suit" in that section should be construed as confined to that part of the suit in question which related to mesne profits.—*Fulchand v. Bai Ichha* (12 Bom. 98).

Dismissal.—Meaning of "suit."—

Where upon the application of the decree-holder, the Court executing the decree has assessed the amount of mesne profits, but the necessary Court-fees have not been deposited within the time fixed by the Court as provided by s. 11 of the Court Fees Act (VII. of 1870), the suit, that is, the claim in respect of those mesne profits, must be dismissed; after such dismissal, no application for execution of the decree for mesne profits can be entertained as no such decree is in existence. The word "suit" in the last part of para. 2 of s. 11 of the Court Fees Act does not mean the entire suit; it means the claim in respect of the mesne profits.—*Kewal Kishan Singh v. Sookhari* (24 Cal. 173).

Ss. 9, 10, 11 and 28 of the Court Fees Act.—S. 54 of the Civil Procedure Code.—

See *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 89), ante, p. 89.

Claim for possession and for mesne profits.—

A claim for possession and a claim for mesne profits may be brought separately, or they may be united. When united, a separate stamp fee for mesne profits is not necessary.—*Bidge Syedun v. Syed Allah Ahmed* (W. R., S. N., 327).

Local enquiry as to mesne profits.—Objection.—

A judgment-debtor who fails to appear before an Ameen deputed to make a local enquiry as to the mesne profits, is not precluded from objecting to the Ameen's report on the ground that the investigation was erroneous.—*Karoo Lal Thakoor v. Baboo Tarucknath Sein* (7 W. R. 140).

Mesne profits.—Valuation in the plaint.—

A plaintiff is bound by his own assessment of mesne profits. *Loch, J.*—It is true that the decree directed that mesne profits were to be assessed in execution, and had plaintiff estimated them in his plaint in a general way, with the view of determining the value of the suit, he would have been entitled to recover whatever sums had been realized or were capable of being realized by the defendant; but when he comes into Court and knowingly fixes the rates of each beegah of land, we think he is bound by his own assessment.—*Karoo Lal Thakoor v. Baboo Tarucknath Sein* (7 W. R. 140).

Where a plaintiff includes a suit for mesne profits in a suit for possession, he is bound to value his claim at what he knows to be the real amount, and cannot be allowed, in the course of a mere inquiry into the amount of damages after decree, to depart from the claim made by his plaint, and set up what is substantially a new and distinct claim.—*Gooroo Doss Roy v. Bungshee Dhur Sein* (15 W. R. 67).

Both these cases were followed in *Baboojan Jha v. Byjnath Dutt Jha* (6 Cal. 472; s. c., 7 C. L. R. 539).

The plaintiff brought a suit for possession, and for a certain sum as mesne profits, which he assessed at three times the annual rent paid to the defendant by tenants in actual possession of the land. He obtained a decree for possession, and the decree ordered that the amount of mesne profits due to him should be determined in the execution proceedings. On an investigation a larger sum was found to be due to him for mesne profits than that claimed by him in his suit. The plaintiff, therefore, paid the excess fee as provided by para. 2 of s. 11 of Act VII. of 1870; but *held*, the amount of mesne profits recoverable by him must be limited to the amount claimed in the plaint.—*Baboojan Jha v. Byjnath Dutt Jha* (6 Cal. 472; s. c., 7 C. L. R. 539).

Distinguished in *Jadoomony Dabee v. Hafes Mahomed Ali Khan* (8 Cal. 295).

Explained in *Gauri Prosad Koondoo v. Reily* (9 Cal. 112).

Where a plaintiff in bringing a suit for possession and for mesne profits, *approximately* estimates the amount of such mesne profits at a certain sum, and obtains a decree which leaves the amount due as mesne profits to be ascertained in execution, he is not bound down to the amount claimed in his plaint; but if more is found due to him, he is entitled on payment of further Court-fees, to recover the larger amount so found due. *Baboojan Jha v. Baijnath Dutt Jha* (6 Cal. 472) distinguished.—*Jadcomony Dabes v. Hafes Mahomed Ali Khan* (8 Cal. 295).

When in a suit for possession of land and mesne profits at a rate stated in the plaint, a decree is passed which directs that the amount of mesne profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated in his plaint, though it may be used as evidence against him in favour of the defendant. *Baboojan Jha v. Baijnath Dutt Jha* (6 Cal. 472; s. c., 7 C. L. R. 589) explained.—*Gauri Prasad Kcondoo v. Reily* (9 Cal. 112).

See also *Huro Gobind Bhukut v. Degumburee Debia* (9 W. R. 217) in which it was held that where a decree provides for the ascertainment of mesne profits at the time of execution the decree-holder is not concluded by what he may have said in his plaint as to the amount thereof.

Commented on in *Baboojan Jha v. Baijnath Dutt Jha* (6 Cal. 472; s. c., 7 C. L. R. 589).

Decree silent as to the date up to which mesne profits are to run.—

Where a decree is silent as to the date up to which mesne profits are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purpose of assessment in execution, up to the date of the institution of the suit. *Sadasiva Pillai v. Ramalinga Pillai* (L. R., 2 I. A. 219; s. c., 15 B. L. R. 883; 24 W. R. 198, P. C.; 3 Suth. P. C. 190), and *Wise v. Rajendur Coomarr Roy* (11 W. R. 200) followed.—*Ram Manickya Dey v. Jugunnath Gope* (5 Cal. 563).

Suit for accounts.—

See *Govindas v. Dayabhai* (9 Bom. 27), *ante*, p. 28.

For other cases on this subject see *Huronath Roy v. Indro Bhosun Deb Roy* (6 W. R., Misc., 33), *Janokee Nath Mookerjee v. Raj Kristo Singh* (15 W. R. 292), *Fakharuddin Mahomed Alijan v. Official Trustees of Bengal* (8 Cal. 178, P. C.; s. c., L. R., 8 I. A. 197; 10 C. L. R. 178), and *Chunder Coomarr v. Ganesh Chunder* (13 Cal. 288).

12. I. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be determined by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

II. But whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph II., shall apply.

Finality.—Question relating to valuation.—Question as to the category under which the relief sought falls.—Distinction.—

Finality—Object of the section.—In amendment of the then existing law, it was proposed to make the decision of the Court in which any suit or appeal was instituted, in regard to the valuation of such suit or appeal, final as between the parties thereto, reserving to the Appellate Court, for the protection of the interests of the revenue, a power of interference of its own motion where the valuation admitted by the Lower Court was clearly wrong and had occasioned loss to the revenue. It was thought that the interests of the parties to the cause should in no way be allowed to be affected by the question as

to whether the just demands of the revenue had or had not been satisfied, and that the then practice under which litigation might be protracted on grounds which had no connection with the question on which the parties to such litigation were at issue, was most objectionable and should be discontinued.—*Proceedings of the Legislative Council* (I. G., 26th Feb. 1870).

As to the meaning of “final” see *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39), *ante* p. 5.

But held that s. 12 of the Court Fees Act does not prevent a party from appealing to the High Court under s. 96 of the Code of Civil Procedure (VIII. of 1859) and urging that the Court of first instance was wrong as to the

particular article of the Schedule of fees by which the case was governed.—*Gunga Monee Chowdhraïn v. Gopal Chunder Roy* (19 W. R. 214).

The provision of finality made by the Court Fees Act, 1870, s. 12, cl. 1, attaches to the value of the *suit*, and not to the value of the *stamp*; a decision as to whether the *full* stamp-duty should be paid, being appealable under the Code of Civil Procedure (VIII. of 1859), s. 36.—*Rajkrishna Banerjee v. Bama Soonduree* (33 W. R. 296).

S. 12 of the Court Fees Act (VII. of 1870) applies merely to the valuation of property for the purpose of calculating the Court-fee when there is no question as to the *article* of the Schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a *wrong article* in the Schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh v. Gunga Pershad* (6 Cal. 249; s. c., 6 C. L. R. 567).—*Omrao Mirza v. Jones* (12 C. L. R. 148).

Question relating to valuation of a suit.—Bengal Tenancy Act.—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge on the ground that as many Court-fees of Rs. 10 each as there were tenants-defendants had not been paid, and the appellants petitioned to the High Court to set aside the order under s. 622 of the Civil Procedure Code. Held, by a Full Bench, that the decision of the Special Judge did not dispose of any question relating to *valuation*, far less of any question relating to the valuation of a *suit*, and the decision is not final under s. 12 of the Court Fees Act. That the proceedings in this case cannot properly be regarded as a *suit*, and neither Art. 17, cl. VI., of Sch. II., nor s. 17 of the Court Fees Act was applicable; the memorandum of appeal is nothing more or less than an application subject to one Court-fee of eight annas only under Art. 1, cl. (b), part II., of Sch. II. of the Court Fees Act. The case of *Petu Ghorai v. Ram Khelawan Lal Bhukut* (18 Cal. 667) was wrongly decided.—*Upadhyaya Thakur v. Persidh Singh* (23 Cal. 723, F. B.).

S. 12 of the Court Fees Act prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what *class* of cases the suit falls for the purpose of the Court Fees Act.—*Omnia v. Bam Dial* (1 All. 360).

See also *Balkaram Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39), *ante*, p. 5, in which Edge, C. J., observed "To explain what I mean by the term 'category' I give an example. If a Court under s. 12 applied to a case in which the only relief asked was a declaration that the plaintiff was the adopted son of A. B., the scale of fees applicable to a case in which the relief asked was a decree for possession of immovable property, that would be an error as to the *category* of the relief asked for, and that question might according to those authorities be the subject of an appeal."

Under s. 12 of Act No. VII. of 1870 the decision of the Court of first instance upon a question relating to *valuation*, not affecting the question of *category*, is final.—*Wilayat Ali Khan v. Umarkdas Ali Khan* (19 All. 166).

Where there is no question as to the valuation of property, but the only doubt is regarding the *application of law* an Appeal Court can consider a decision as to valuation of a suit for purposes of Court-fees. The right mode of valuation is to consider the material, but not incidental, relief sought.—*Abaji v. Ramchandra* (F. J., 1885, p. 84).

S. 12 of the Court Fees Act, which makes the decision of a Court in which a plaint or memorandum of appeal is filed, final on questions relating to valuation for the purpose of determining the amount of any fee chargeable, does not affect a question as to the *class* of suits in which a particular suit ranks. Turner, C. J.—In order to determine the Court-fee payable on a plaint or memorandum of appeal it is necessary to decide to which of the several classes recognized by the Court Fees Act the suit belongs. Where the fee prescribed for a particular class of suits is regulated by the value of the subject-matter of the suit, the further question arises what is the value for the purpose of determining the amount of the fee In our judgment the terms of s. 12 of the Court Fees Act ought not to receive a larger interpretation than they fairly admit of. They do not declare the decision of the Court in which the plaint or appeal is filed final on *all* questions which may arise respecting the Court-fee, but on every question relating to *valuation* for the purpose of determining the amount of the fee. This may be a mere arithmetical calculation, but it may involve the decision of a simple question of fact. On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise respecting the fee properly leviable in the suit; it is conceivable that the Legislature designedly prohibited appeal in the one case and permitted it in the other.—*Annamalai Chetti v. Cloete* (4 Mad. 204).

See also *Kanaran v. Komappan* (14 Mad. 169), *ante* p. 27, in which it was held that the High Court was not precluded by this section from revising the decision of a Subordinate Court and reversing the decree. Where it is not a mere question of amount or arith-

metrical calculation this section does not apply and no finality attaches.

Shall be decided.—

Where no question of valuation for the purpose of determining the amount of institution-fee payable on a suit has been raised either in the Court of first instance, or in the grounds of appeal, the Appellate Court is not competent to raise such question.—*Kala Chand Sen v. Anund Kristo Bose* (22 W. R. 439).

Dissented from in *Shama Soondary v. Hurro Soondary* (7 Cal. 348; s. c., 8 C. L. R. 528).

A suit was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken, and the question rightly decided in the Court of first instance. *Held*, on second appeal, that the order of the Judge was properly made under s. 12, cl. II., of the Court Fees Act (VII. of 1870). The words "every question relating to valuation..... shall be decided by the Court" do not carry with them the meaning that a distinct question or issue relating to valuation must be raised and a formal decision thereon passed by the Court of first instance, before a Court of appeal can interfere.—*Shama Soondary v. Hurro Soondary* (7 Cal. 348; s. c., 8 C. L. R. 528).

See *Wylayat Ali Khan v. Umardaras Ali Khan* (19 All. 165), p. 46, and *Kaladdin v. Baghoji* (1 Bom. H. C., A. C., 62), p. 47, *post*.

Shall be final.—

An Appellate Court has no power to set aside a decision arrived at by the Court of first instance as to the valuation of the property in suit.—*Mafizuddin alias Ashad Ali Chowdhry v. Karimunissa* (6 B. L. R., Ap., 11).

Under Act XXVI. of 1867, the decision of a Court of first instance, as to the valuation of the subject-matter of a suit, is final.—*Ishan Chandra Mookerjee v. Lokenath Roy* (6 B. L. R., Ap., 72).

See *Balkaran Rai v. Gobind Nath Triwari* (12 All. 129, F. B.; s. c. W. N., 1890, p. 39), *ante*, p. 5.

The parties must have an opportunity of being heard.—The decision of the Court on a question of the Court-fee payable on a plaint or memorandum of appeal which is to be "final as between the parties to the suit" must be a decision made between the parties on the record and after they had an opportunity of being heard, and not a mere decision based on the report of a Munsarim before the plaint or memorandum of appeal is filed, and therefore before any parties are before the Court. Hence when a Court of first instance held on the report of the Munsarim that a plaint presented to it had been insufficiently

stamped, but subsequently both parties being before the Court and arguments having been heard, decided that the Court-fee originally paid was sufficient, it was held that the latter decision was the decision which was final as between the parties within the meaning of s. 12 of the Court Fees Act, 1870.—*Amjad Ali v. Muhammad Israil* (20 All. 11).

Finality.—Revision.—

A decision by a Subordinate Court on a question of valuation determining the amount of Court-fee is, notwithstanding its declared finality, subject to revision by the High Court under s. 622 of the Civil Procedure Code (XIV. of 1882) and a 5 of Reg. II. of 1827.—*Vithal Krishna v. Balkrishna Janardan* (10 Bom. 610, F. B.).

Rejection of plaint on the ground of under-valuation.—Appeal.—S. 54 of the Civil Procedure Code.—

Where a plaint is rejected under s. 30 of Act VIII. of 1859 (Civil Procedure) by the first Court, on the ground that it is under-valued, an appeal lies from such order under s. 36 of Act VIII. of 1859, and this appeal was not taken away by the note to Article 11, Sch. B to Act XXVI. of 1867, the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint.—*Collector of Sylhet v. Kali Kumar Dutt* (7 B. L. R. 663, F. B.).

See *Rajkristo Banerjee v. Bama Soonduree* (23 W. R. 296), on the preceding page.

The civil Judge dismissed an appeal on the ground that the appellant fraudulently presented a stamp insufficient to cover the stamp-duty properly payable by him on appeal, although the appellant offered to supply additional stamps to make up the proper amount. On special appeal, the proper stamp-duty having been paid, the High Court held that the course taken by the civil Judge amounted to such a substantial error in the investigation of the case as called for the interference of the High Court, and remanded the case for investigation on the merits.—*Ambala Ramaswami Iyengar v. Mahamadalli Ravutan* (5 Mad. H. C. 830).

An appeal lies against an order rejecting a plaint on the ground of its being insufficiently stamped.—*Ajoodhya Pershad v. Gunga Pershad* (6 Cal. 249; s. c., 6 C. L. R. 567).

Followed in *Omrao Mirza v. Jones* (12 C. L. R. 148), and *Muhammad Sadik v. Muhammad Jan* (11 All. 91).

In a suit instituted upon a ten-rupee stamp for an account, the removal of the original trustee, and the appointment of a new trustee, where the value of the trust property was 5 lakhs of rupees, the Court below directed that the stamp should be calculated upon the value of the trust property, and ordered that the deficiency should be made up within a particular time. Before the time expired a rule was obtained from the High Court under s. 622

of the Civil Procedure Code to show cause why the order should not be set aside. *Held*, that the rule must be discharged, inasmuch as, if the suit had been dismissed on the expiration of the time limited, on the ground that the relief was not properly valued, there would have been an appeal. S. 12 does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad v. Gunga Pershad* (6 Cal. 249; s. c., 6 C. L. R. 567).—*Omrao Mirza v. Jones* (12 C. L. R. 148).

The Court of first instance being of opinion that the plaintiff bore an insufficient Court-fee, and the plaintiff not making good the deficiency, dismissed the suit after recording evidence, but without entering into the merits. On appeal the lower Appellate Court held that the Court-fee was sufficient, and remanded the case for trial on the merits. *Held*, that s. 158 of the Civil Procedure Code was not applicable to the case; that the first Court's disposal of the suit must be treated as being under s. 54, and was therefore a decree within the meaning of s. 2, and appealable as such, and that such appeal was not prohibited by s. 12 of the Court Fees Act. *Ajoodhya Pershad v. Gunga Pershad* (6 Cal. 249; s. c., 6 C. L. R. 567) and *Annamalai Chetti v. Cloete* (4 Mad. 204), referred to. The Court observed,—“On behalf of the appellants s. 12 is said to be a direct prohibition against an appeal in this matter. If that argument is to be accepted there would be no appeal when a Judge of first instance wrongly decided that a suit was undervalued, and on that decision rejected the plaintiff. In our opinion the intention of the framers of the Code of Civil Procedure was that there should be an appeal in every case falling under s. 54; otherwise we should have found in the definition of decrees in s. 2 words limiting those orders under s. 54 which might for the purpose of the Code be considered decrees..... In *Annamalai Chetti v. Cloete* (4 Mad. 204) the learned Judges endeavoured to reconcile s. 54 of the Code of Civil Procedure with s. 12 of the Court Fees Act. We do not think it necessary to consider whether those sections can or cannot be reconciled, as we are of opinion that an appeal lies under the Code of Civil Procedure.—*Muhammad Sadik v. Muhammad Jan* (11 All. 91; s. c., W. N., 1888, p. 286).

S. 12 does not prevent a second appeal from an order dismissing a suit on the ground that insufficient Court-fee has been paid on the plaint. Such an appeal lies with reference to s. 54 (b), read with ss. 2, 540, and 584, of the Civil Procedure Code.—*Hira Lal v. Wali Bhagat* (W. N., 1889, p. 124).

The Subordinate Judge rejected a portion of the claim as it was not valued and no stamp-duty was paid on it without allowing plaintiff an opportunity under s. 54 of the Civil Procedure Code of supplying the omission. *Held*, that his decision was not final under cl. 1 of s. 12 of Act VII. of 1870, and that the deficient stamp-duty having been

paid on first appeal, plaintiff was entitled to have that portion of the claim heard.—*Bhaishankar v. Motiram* (F. J., 1888, p. 120).

In deciding the amount of stamps to be borne by the memorandum of appeal, the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint.—*Motigavri v. Pranjivandas* (6 Bom. 302).

See *Kanaran v. Komappan* (14 Mad. 169), ante, p. 43.

Order of a District Judge dismissing the appeal as improperly stamped is appealable.—*Vithal v. Balkrishna* (P. J., 1888, p. 339).

Held, that an order rejecting a plaint as insufficiently stamped was appealable.—*Sardarsingji v. Ganpatsingji* (17 Bom. 56).

But see the following cases:—

The law which provides that the decisions of a Court as to the market-value or annual profits of property in suit shall be final, repeals by implication the provisions in sections 81 to 86 of Act VIII. of 1859 (Civil Procedure) whereby an appeal is allowed from the order of a first Court rejecting a plaint for improper valuation.—*Madhoosoodun Chuckerbutty v. Ryemonee Dassee* (13 W. R. 415).

There is no appeal against the order of a District Judge fixing the amount of the Court-fee chargeable on a plaint. The right of appeal to which the plaintiff might have been entitled under ss. 81 to 86 of Act VIII. of 1859 (Civil Procedure) has been taken away by s. 12, cl. 1, of the Court Fees Act (VII. of 1870).—*Narayan Madhavrao Naik v. Collector of Thana* (2 Bom. 145).

Followed in *Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219).

Held, following *Narayan Madhavrao v. Collector of Thana* (2 Bom. 145) that the decision of the Court of first instance, rejecting a plaint for insufficiency of the valuation and stamp for the purposes of the Court Fees Act (VII. of 1870), not being to the detriment of the revenue, is final, and no appeal lies from it.—*Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219).

The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference or revision; but the Court of first instance is not justified in rejecting the plaint without giving the plaintiff an opportunity of fixing the proper stamp.—*Bai Anope v. Mulchand Girdhar* (9 Bom. 355).

See *Vithal Krishna v. Balkrishna Janardan* (10 Bom. 610, F. B.), on the preceding page.

Held, following *Vithal v. Balkrishna* (10 Bom. 610, F. B.), that an appeal against dismissing a suit under s. 54 of the Code of Civil Procedure for not correcting the valuation was inadmissible.—*Narayan v. The Secretary of State for India in Council* (P. J., 1894, p. 425).

See also *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39) in which Edge, C. J., said—"Another argument in support of the contention that 'final' does not mean final was that inasmuch as an order of rejection under s. 54 of the Code of Civil Procedure rejecting an appeal is a 'decree,' every such order in virtue of s. 540, or s. 584, as the case may be, is appealable as a decree, and that similarly a decision under s. 12 or s. 5 of the Court Fees Act is appealable. It appears to me that argument is based upon a confusion of reasoning. I would not have thought it necessary to observe, if it had not been contended to the contrary, that s. 2 of the Code of Civil Procedure, which merely defines what is a decree, does not confer any right of appeal. That section (s. 540) does not confer a right of appeal from all adjudications or orders which are decrees as defined in s. 2 of the Code of Civil Procedure. It only confers the right of appeal in cases in which the right of appeal is not expressly taken away by the Code of Civil Procedure 'or by any other law for the time being in force.' It cannot be doubted that ss. 5 and 12 of the Court Fees Act are in force, nor can it be doubted that by those sections it is respectively expressly enacted that the decisions in those sections respectively referred to shall be and are 'final.' A decision, decree or order could not be described as 'final' if it was appealable, or so long as it was appealable, and I must assume that the Legislature in using the term 'final' in ss. 5 and 12 used it in the legal sense in which that term is always used in Acts and Codes. So far, therefore, if at all, as s. 54 of the Code of Civil Procedure applies to decisions under s. 5 or s. 12 of the Court Fees Act, the orders under it come within the exceptions contained in ss. 540 and 584 of the Code of Civil Procedure."

To the detriment of revenue.—

When the question has been wrongly decided to the detriment of the subject, but to the advantage of the revenue, no appeal would lie. See *Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219), on the preceding page.

The object of the proviso in s. 12, Act VII. of 1870, was to enable the Appellate Court to interfere for the protection of revenue in a case where a question of valuation might be raised and improperly decided.—*Kalachand Sen v. Anund Kristo Bose* (22 W. R. 483).

Shall require additional fee.—Dismissal.—

When a suit has been admitted upon a certain stamp, tried and decreed for the plaintiff, "under-valuation" is no ground for dismissing the defendant's appeal.—*Emaudin Khan v. Ramkishore Kowar* (5 B. L. R., Ap., 80).

Where a Munsif ruled erroneously that a suit instituted in his Court had been correctly valued, and it appeared that if the suit had been correctly valued, the Munsif would not

have had jurisdiction to entertain it, the lower Appellate Court having regard to cl. 2, s. 12, of the Court Fees Act (VII. of 1870), ordered that the appeal should be decreed, and the plaintiff retained until the plaintiff should pay the additional stamp-duty, when the suit would be made over to the Subordinate Judge for re-trial. *Held*, that the order was a proper one.—*Brojo Coomarr Sen v. Eshan Chunder Das* (3 C. L. R. 79).

The plaintiff's claim was decreed by the first Court. The lower Appellate Court finding the Court-fee paid by the plaintiff to be deficient ordered the plaintiff to make up the deficiency within ten days, and on his failing to comply with the order dismissed the claim and allowed the appeal. *Held*, that the decision was unexceptionable and s. 578 of the Code of Civil Procedure had no application because an objection that a relief has been undervalued affects the jurisdiction of the Court.—*Ram Peari v. Balgobind Das* (W. N., 1885, p. 294).

See also *Kerala Varma v. Chadayan Kuthi* (15 Mad. 181), *ante*, p. 39, in which it was held that where the appeal by one of the defendants was made relating to one item only and not against the whole decree, the order of the District Judge in dismissing the suit for failure of the plaintiff to pay additional duty demanded was irregular, because he had no jurisdiction over the whole subject-matter.

Refusal to pay additional Court-fee.—The refusal of a plaintiff respondent to make good a deficiency in Court-fees in respect of his plaint, when called upon to do so by the Appellate Court, is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance, and dismiss the suit.—*Mehdi Husain v. Madar Bakhsh* (2 All. 889).

Deficient duty made up in the High Court.—*Plea of limitation not allowed.*—The plaintiff suing in respect of certain plots of land, by mistake under-valued their claim with regard to the said land, and in consequence paid an insufficient Court-fee on their plaint. This mistake was not discovered until the case had come in appeal before the High Court, and when discovered, the deficiency was at once made good. This was done after the expiry of the period of limitation for the institution of the suit. *Held*, that no plea as to the deficiency in the Court-fee having been raised, as it might have been, by the defendant before the decision of the suit in the Court of first instance, such plea could not be raised for the first time in appeal, and the High Court was not justified in allowing the plea of limitation to be raised and in holding the claim to be barred.—*Wilayat Ali Khan v. Umardaras Ali Khan* (19 All. 165).

When it was discovered in second appeal in the High Court, that the respondent, when appellant in the lower Appellate Court, had not paid a sufficient Court-fee on his memo-

randum of appeal in that Court, and up to the date of the hearing of the appeal in the High Court, though called upon to do so, had not made good the deficiency, it was *held*, that the proper procedure was not to dismiss the respondent's appeal to the lower Appellate Court, but to stay the issuing of the decree, if any, of the High Court in favour of the respondent until such time as the additional Court-fee due by him might be paid.—*Narain Singh v. Chaturbhuj Singh* (20 All. 362).

When a memorandum of appeal is insufficiently stamped, the deficient stamp-duty should be levied by the Appellate Court.—*Chennappa v. Raghumatha* (15 Mad. 29).

Time must be allowed for making up the deficiency.—

Where a petition of appeal had been filed, time allowed for the issue of notice, and a day fixed for hearing, it was held to be the duty of the Judge, under s. 81, Act VIII. of 1859 (Civil Procedure), on finding that the petition was inadequately stamped, to give the appellant an opportunity of filing the proper stamp.—*Nussurul Ali Chowdhry v. Mahomed Kanoo Sikdar* (11 W. R. 541).

Where a defendant, after the case had been gone into on the merits, set up that the suit had been under-valued, and the Court of first instance found in favour of the plaintiff on that issue, but the lower Appellate Court was of a contrary opinion, and dismissed the suit, *held*, that the lower Appellate Court should, before dismissing the suit on that ground, have allowed the plaintiff the option of supplying the necessary stamps, as the first Court would have done, under s. 31, Act VIII. of 1859 (Civil Procedure). In any case, the order of the first Court was not one affecting the merits of the case or jurisdiction of the Court; and therefore, under s. 350, Act VIII. of 1859, the suit could not be dismissed on appeal upon that ground.—*Syed Wajid Ali Khan v. Lala Hanuman Prasad* (4 B. L. R., A. C., 139; s. c., 12 W. R. 484).

Held, in special appeal, that the lower Appellate Court was right in setting aside the proceedings of the Munsif, on the ground that the property in suit was valued at an amount beyond his jurisdiction; but the plaintiff was entitled to have the plaint returned to him that he might present it with the proper additional stamp before the proper Court.—*Mt. Edoe v. Shaikh Hefasut Hossein* (5 B. L. R., Ap., 15; s. c., 13 W. R. 258).

Even if a suit was not sufficiently valued it was the duty of the Court in which such suit was preferred, to give the suitor the option of supplying such additional stamp as was thought necessary before rejecting the plaint.—*Thakoor Patuck v. Ram Soomrun Lal* (1 N.-W. P. 16).

Decree reversed where the lower Court had rejected a suit as improperly valued without fixing a time within which plaintiff might correct the valuation.—*Raghumath v. Gangadhar* (P. J., 1888, p. 58).

See *Sheo Pratab Narain Singh v. Sheo Golam Singh* (2 All. 875), p. 39, *Bai Anope v. Bhulchand Girdhar* (9 Bom. 355), p. 22, and *Bhai-shankar v. Motiram* (P. J., 1888, p. 58), p. 45, *ante*.

Appeal.—Objection as to valuation.—

Special appeal.—An objection as to the decree of a Subordinate Court, founded on the improper valuation of the suit, is not such an objection as may be entertained when raised for the first time in special appeal.—*Kaladdin Guru Bakas v. Raghoji* (1 Bom. H. C., A. C., 62).

Appeal.—When it appears on appeal, that the suit has not been rightly valued, and, if rightly valued, the Court of first instance would not have had jurisdiction to try it, the Appellate Court may entertain the objection, though it had not been raised in the Court below.—*Sheo Gobind Ravai v. Abhai Narayan Singh* (5 B. L. R., Ap., 17).

Ground of appeal going to the whole of the respondent's decree.—

Where one of several appellants takes a ground of appeal, which goes to the root of the respondent's case, and which, if successful, would deprive the respondent of his decree as a whole, and not merely of his interest in it *quod* the particular appellant, the Appellate Court is justified in refusing to hear such appeal on such ground as aforesaid unless he pays a Court-fee sufficient to cover the whole relief obtainable on such ground of appeal.—*Bujhawan Rai v. Makund Lal* (15 All. 112; s. c., W. N., 1892, p. 248).

Appeal.—Petition of objection relating to costs.—

S. 561 of the Civil Pro. Code.—S. 12 of the Court Fees Act, 1870, does not apply to a petition of objection under s. 561 of the Code of Civil Procedure. Where such a petition of objection relating only to the costs awarded against the respondent had been filed under s. 561 of the Code of Civil Procedure, as that section stood before the passing of Act VII. of 1888, on an eight-anna stamp, and where on objection taken by the Munsarim to the stamp the additional stamp as assessed by him was deposited before the hearing of the appeal, but after the date fixed for hearing, *held*, that the petition of objection was not barred by limitation. There is apparently no provision made by the Court Fees Act, 1870, for the case of a petition of objection filed by a respondent under s. 561 of the Code of Civil Procedure where such objection relates solely to costs and the appellant has appealed against the whole of decree.—*Hasan Bano v. Nizam-ud-din* (W. N., 1893, p. 55).

Partial relief.—Appeal against decree by instalments.—Valuation.—

The Court-fee which an appellant has to pay on a memorandum of appeal from a decree which gives him only partial relief are to be calculated upon the difference between the value of the relief which he claims

and the relief granted by the decree appealed against. Where a decree was made payable by three instalments, and the plaintiff appealed on the ground that it should not have been made so payable, *held*, that the Court-fee should be calculated upon the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree.—*Lukhun Chunder Ash v. Khoda Buksh Mondul* (19 Cal. 272).

Right of occupancy.—Perpetual lease.—Valuation.—

A suit for possession of certain lands having been decreed on the ground of plaintiff's right of occupancy, but the perpetual (mou-rosee) character of the leases under which the claim had been made having been disallowed, an appeal was preferred to have it declared that the leases were perpetual. *Held*, that as the value of the claim would be the difference in the value of the land as held under a mourosee tenure at a fixed rent, or an ordinary tenure at a fluctuating rent, and as this might be an extremely difficult calculation, the stamp fee upon the appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of his claim.—*Kebul Ram Mundul v. W. S. Wells* (24 W. R. 454).

Appeal.—Valuation of relief.—

In this suit the plaintiff valued his relief at Rs. 1,015, but the Court of first instance

on enquiry found the value of the land in suit to be Rs. 6,090, and on plaintiff's failing to make up the deficiency within a time fixed by the Court, dismissed the suit. The plaintiff appealed, and the lower Appellate Court held that the order of the first Court was not appealable under s. 12, cl. I. of the Court Fees Act. The plaintiff thereupon appealed to the High Court valuing his relief at Rs. 245, being the difference between Rs. 325 the Court-fees on Rs. 6,090, and Rs. 80 the Court-fees on Rs. 1,015. *Held*, that the relief was correctly valued.—*Durga Prasad v. Raghubar Dial* (W. N., 1882, p. 244).

Court's discretion as to costs.—

There is nothing in s. 12 of the Court Fee Act which precludes a Judge from exercising his discretion in the matter of costs. An appellant was held to have acted rightly in putting in his appeal upon the valuation of the plaintiff as approved by the first Court, although that valuation had been greatly over-estimated, and the Appellate Court was held to have been justified in awarding costs in proportion to what it considered the proper valuation.—*Muthooranuth Mozomdar v. Mohobuttunnissa Bibee* (20 W. R. 206).

See also *Ajoodhya Chowbey v. Daibee Singh* (8 Agra 5), *ante*, p. 36, and *Queen-Empress v. Khajaboy* (16 Mad. 423), under s. 19, cl. XVIII., *post*.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 562* of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Rejection of plaint.—

"The plaint may at the discretion of the Court, at, or any time before, the settlement of issues, be rejected, if it does not disclose a cause of action."—*The Code of Civil Procedure* (XIV. of 1882), s. 53, as amended by Act VII. of 1888, s. 9.

"The plaint shall be rejected in the following cases:—(a) if the relief sought is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (b) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required

* The reference to s. 351 of the old Code (VIII. of 1859) is altered in accordance with s. 3 of the new Code (XIV. of 1882).

by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so, (c) if the suit appears from the statement in the plaint to be barred by any positive rule of law; (d) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time."—*Ibid.*, s. 54.

Rejection of appeal.—

"If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed (s. e. in s. 541), it may be rejected or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there."—*Ibid.*, s. 543.

Remand of case by Appellate Court.—

"If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case together with a copy of the order in appeal to the Court against whose decree the appeal is made with directions to re-admit the suit under its original number in the register and proceed to determine the suit on the merits. The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded."—*Ibid.*, s. 562, as amended by Act VII. of 1888, s. 49.

Remand.—Return of fees to the appellants and respondents.—An Appellate Court having remanded a case for a fresh decision under s. 562 of the Civil Procedure Code refunded to the plaintiff appellants and the respondents, under s. 13 of the Court Fees Act, 1870, the Court-fees paid by them on the appeal and the cross-objections. In appeal the High Court having reversed the remand order as illegal returned the appeal for decision according to law. The Appellate Court gave eight days' time to the parties to pay the Court-fees. The plaintiff having failed to pay the stamp on the appeal the Court dismissed the appeal. The respondents paid the stamp on their objections, and claimed to have them heard. The Court did so and decided them in their favour. *Held*, in second appeal, that the respondents had the right to be heard. That strictly speaking, perhaps no refund of fees ought to have been made to the respondents, for s. 13 of the Court Fees Act does not mention them, yet their subsequent payment cured the defect.—*Rajmal Motiram v. Tuka bin Kundlika Malee* (F. J., 1896, p. 72).

Refund of fees paid in original suit.—Power of Government to refund.—

Power of the Court is limited to ss. 13, 14 and 15.—The plaintiff brought a suit for declaration of his miliki right over a certain patni tenure and he alleged that the defendants had executed a hiba in his favour in consideration of a diamond ring worth Rs. 30,000. He valued his suit at Rs. 5,600, being twenty times the Malikana of Rs. 280, to which the

petitioner alleged he was entitled. The Subordinate Judge held that the plaintiff was bound to value his suit at Rs. 30,000, the consideration mentioned in the hibanama. The plaintiff paid the deficiency, and his suit was ultimately dismissed. The plaintiff appealed to the High Court and valued his appeal at Rs. 5,600, which valuation was accepted by the High Court. On an application by the plaintiff for a certificate authorizing him to receive back from the Collector the excess of stamp-duty paid by him, *held*, that the Court had no power to grant it, its power being limited to cases specified in ss. 13, 14 and 15 of the Court Fees Act; but that there was nothing in the law preventing the Government from refunding any amount which they may think the plaintiff was improperly ordered to pay.—*In the matter of the Petition of Moulvie Syud Zoymooddeen Hossein Khan* (11 B. L. R., A. C., 370).

Appeal remanded in part.—

Held, by the majority of the Court (Loch J., dissenting, and Campbell, J., doubting) where an appeal is remanded in part, the appellant is entitled to a return of a proportionate part of the stamp-duty paid by him.—*In the matter of the Petition of Door-gadass Dutt* (B. L. R., Sup. Vol., 511; s. c., 6 W. R., Misc., 65).

Suit compromised pending the appeal.—

No refund of stamp-duty can be allowed when a suit is compromised pending the hearing of an appeal preferred.—*The Land Mortgage Bank of India, Limited v. Gregory Paul Mehtus* (4 B. L. R., Ap., 96).

Refund in other cases.—

Excess stamps filed in consequence of over-valuation.—See *In the matter of G. H. Grant* (14 W. R. 47), ante, p. 39.

Refund in matters of administration.—The Government has directed that excess stamps put in by mistake in matters of administration should be refunded.—*I. G. Notn.*, No. 2025 of 1872 (I. G., 17th Sept. 1872, p. 732).

See ss. 19 A and 19 B, post.

Refund under the Presidency S. C. C. Act.—"Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties, by whom the same have been respectively paid."—*The Presidency Small Cause Courts Act* (XV. of 1882), s. 73.

Refund under the Madras City Civil Court Act.—"Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled, or any evidence recorded, half the amount of the institution-fees paid by the plaintiff shall be repaid to him by the Court."—*The Madras City Civil Court Act* (VII. of 1892), s. 13.

See also ss. 10, 14 and 15 of this Act.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the

Refund of fee on application for review of judgment.

decree, the Court unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate, authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.*

Application for review.—

See s. 623 of the Code of Civil Procedure (XIV. of 1882).

Computation of time.—Vacation.—

Time during which Court is closed cannot be excluded.—In computing the period of eighty-nine days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under Art. 5, Sch. I of the Court Fees Act, 1870), the time during which the Court is closed for vacation cannot be excluded. Where the Court was closed on the eighty-ninth day from the date of the decree and the application for review was presented on the day the Court re-opened, it was held that the full fee was payable.—*In re Kota* (9 J. ad. 184).

An application for a review of judgment having been made on the first day after the vacation, after the ninetieth day from the

date of the judgment it was sought to review, it appeared that the ninetieth day fell during the vacation when the High Court was closed. *Held*, that the full fee leviable on the memorandum of appeal must be paid in the first instance, but that the Court, if satisfied that the delay was not caused by the laches of the applicant, might direct a refund of one half of such fee.—*In the matter of Doorga Prosunno Ghose* (9 C. L. R. 479).

Application for review.—Refund.—

Stamp-duty paid in on a petition of the nature of an application for review, may be refunded where there is no final decision.—*Prosunno Chunder Roy Chowdhry v. Nabo Kristo Chatterjee* (18 W. R. 484).

For refund of fees under the Punjab Courts Act XVIII. of 1884, see notes under Sch. I, Art. 18, post.

For refund of fees under the Lower Burma Courts Act XI. of 1889, see notes under Sch. I, Art. 14, post.

15. Where an application for a review of judgment is admitted, and

Refund where Court reverses or modifies its former decision on ground of mistake.

where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application† as exceeds the fee payable on any other application to such Court under the second Schedule to this Act, No. I., clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Object of the section.—

It was proped through the provisions of this section to guard against the increased fee working harshly by allowing a refund of the enhanced amount payable under its operation, where the result of the application was the reversal or modification of the previous judgment on such ground as amounted to an admission of the Court's error.—*J. G.*, 26th Feb. 1870.

Power of Court to refund.—

When the case does not fall within ss. 13, 14 and 15, and the applicant has paid too high a stamp-duty, or thinks that he has done so, his proper course is to apply to the Government for a refund; the Court can give him no relief unless it is expressly authorized to do so.—*In the Matter of the Petition of Moulvie Syud Zoynoodeen Hossein Khan* (11 B. L. R., A. C., 870).

See ss. 10, 18 and 14, ante, with notes.

* See Sch. I., Arts. 4 and 5, post.

† The word "application" has been substituted for the original words "plaint or memorandum of appeal," by Act XX. of 1870, s. 1.

16. When any appeal is presented to a Civil Court, not against the whole of a decision but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section 561* of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to.

Appeal against a portion of the subject-matter.—Valuation.—

Suit for arrears of maintenance and declaration.—Decree for arrears.—Appeal for declaration.—In a suit upon an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for declaration that the money due was realizable from the surplus of the *charao* (offerings to the idol), and recoverable from the defendant's successors in office, the original Court passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of Rs. 10. The respondent objected that the declaration asked for in appeal involved consequential relief and an *ad valorem* fee was payable by the appellant. *Held*, that the memorandum was correctly stamped under s. 16 and cl. III., Art. 17, Sch. II., of the Court Fees Act (VII. of 1870). *Venkappa v. Narsimha* (10. Mad. 187) and *Vithal Krishna v. Dutakrishna Janardan* (10 Bom. 610), distinguished.—*Grijanand Dutta Jha v. Sailojanand Dutta Jha* (23 Cal. 645).

Appeal for a larger share than decreed.—When a Court decreed property in shares to the members of a family, and one appealed claiming a larger share, the stamp should be calculated on the value of the excess he claims supposing him to be content with the decree so far as it has given him a share, i. e., on the value of the relief he seeks. The appellant is not bound to pay duty except on the computed value of the relief he really seeks.—*Moro Vishvanath v. Ganesh Vithal* (10 Bom. H. C., A. C., 444).

Ground of appeal going to the whole of the respondent's decree.—See *Bujhawan Rai v. Makand Lal* (15 All. 112), *ante*, p. 47.

Appeal against decree by instalments.—Valuation.—See *Lukhun Chander v. Khoda Buksh* (19 Cal. 372), *ante* p. 48.

Appeal against part of decree.—Alteration in form of decree.—Application of the section.—S. 16 of the Court Fees Act refers to cases where a party losing substantially a portion of his claim is precluded from agitating and re-asserting it before the Appellate Court without paying the proper stamp-fee. Where plaintiff prayed

for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled and the lower Court decreed to her joint and undivided possession of her half share, and she also succeeded in the whole of her claim as before the High Court in special appeal: *Held*, that as the separate possession by partition is a form of decree at the option of the plaintiff, the Court was in justice bound to grant her request that the decree should be re-framed in such a manner as to award possession to her in severalty without regard to any stamp-fee.—*Bhasonath Chatterjee v. Madhulal Dube* (15 W. R. 511).

Appeal against part of the decree.—Appellant appealed against part of the decree and paid the stamp accordingly. Respondent, under s. 161 of the Civil Procedure Code filed cross objections against the decree and claimed the whole amount minus Rs. 5,00. *Held*, that the respondent was bound to pay Court-fee on what remained after deducting from the whole sum originally claimed, the amount made up of Rs. 5,00 and the part objected to by the appellant.—*Nambha v. Bai Shri Bajiraj* (P. J., 1889, p. 297).

Subject-matter of suit.—Costs.—

Costs of suit.—The costs of a suit are no part of the subject-matter in dispute.—*Doorga Loss Chowdhry v. Rama Nauth Chowdhry* (8 Moore's I. A. 262). See also *Nilmadhub Doss v. Bishumber Doss* (13 Moore's I. A. 45).

But *held*, by the Madras High Court, *in re Mahai* (19 Mad. 260), that apart from and independently of any other relief which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first Schedule of the Court Fees Act.

Where the appellants appeal in respect of costs incurred for the claim for which they do not appeal the costs form a distinct subject-matter in dispute and the memo. of appeal is chargeable accordingly.—*Krishna ji v. Balaji* (P. J., 1892, p. 52).

* The reference to s. 348 of the old Code (VIII. of 1859) is altered in accordance with s. 3 of the new Code (XIV. of 1889).

Pauper respondents.—

See notes, *ante*, p. 10.

Court shall not hear such objections.—

This would mean that the fee may be paid at any time before the objections are heard, and not when the objections are filed under s. 561 of the Civil Procedure Code.—See *Rashmonee Dossee v. Chowdhry Junmojoy Mulick* (9 W. R. 356), *ante*, p. 10.

Giving effect to the objection subject to the payment of fee.—Precisely the same principle applies to an objection called a cross-appeal, under s. 348, Act VIII. of 1859 (Civil Procedure), which enables the respondent to take any objection to the decision of the lower Court which he might have taken if he had preferred a separate appeal. The joint effect of this section and of Act VII. of 1870, s. 16, is to place the respondent in the position of a cross-appellant in so far that he must, before the hearing, specify his matter of objection and must pay into Court the Court-fee attaching thereto. An Appellate Court was held to have acted without authority, and to have contravened the Court Fees Act, in having voluntarily suggested what it thought to be an error of the Court below, and allowing the respondent to take it as an objection, giving effect to the objection subject to the payment of the Court-fee stamp.—*Sharoda Soonduree Debee v. Gobind Monee* (24 W. R. 179).

See *G. N. Fagan v. Chunder Kant Banerjee* (7 W. R. 452) and the next two cases, *ante*, p. 6. Also *Fatma Begum v. Mir Zulfikar-alkhan* (P. J., 1887, p. 278), *ante*, p. 8.

Withdrawal of appeal.—Held, that objections under s. 348, Act VIII. of 1859 (corresponding to s. 561 of the present Civil Procedure Code of 1882), can only be heard when the

opposite party being appellant prosecutes his appeal, and not when he withdraws from it, or the appeal is dismissed for default.—*Bahadur Singh v. Bhugwan Das* (1 Agra 23; s. c., N. W. P., 1866, p. 23).—*Ram Pershad Ojha v. Bhurosa Koonwar* (9 W. R. 328).—*Shama Churn Ghose v. Radha Kristo Chaklanuviss* (14 W. R. 210).—*Barodakant Bhattacharjee v. Pearce Mohun Mookerjee* (23 W. R. 57).—*Coomar Puresh Narain Roy v. Watson and Co.* (23 W. R. 229).—*Surbhai v. Raghunathji* (10 B. H. C., A. C., 397).—*Maktab Beg v. Hasan Ali* (8 All. 551).—*Jafar Husain v. Ranjit Singh* (17 All. 518).

But held, that after the hearing of an appeal has commenced, the Appellate Court is seized of the respondent's objections, and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined.—*Dhondi Jagannath v. Collector of Salt Revenue* (9 Bom. 28).—*Venkataramanaiya v. Kuppi* (3 Mad. H. C. 302).

Verbal objections.—Held, in *Ramnarain Bhattacharjee v. Mohees Chunder Roy* (2 Hay 79), that the word "objection" used in s. 348 of Act VIII. of 1859 was not limited to written objections simply, but comprehended also verbal objections. But in *Hoolas Kooeres v. Sufrehun; Sufeehun v. Mahomed Hubeboollah Khan* (8 W. R. 379) an application to file a cross-appeal orally was rejected on the ground, *inter alia*, that it was not filed on the regulated stamp.

Additional fee.—

No additional fee payable by respondent when the whole decision is appealed against.—When the appeal of an appellant is against the whole of the decision of the lower Court, and upon the full value of the original suit, no additional stamp-duty is required in respect of the respondent's objection under this section.—*Anund Mohun Chatterjee v. Sutto Ram Mozoomdar* (8 W. L. 121).

17. Where a suit embraces two or more distinct subjects, the plaintiff or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the Multifarious suits. the aggregate amount of the fees to which the complaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 45, paragraph 2.*

Application of the section.—

The section applies only where cumulative reliefs are sought.—Where the plaintiff sues, in the alternative, for one of two reliefs, the larger of the two reliefs sought determines the amount of the stamp. S. 17 of the Court Fees Act (VII. of 1870) does not apply to such a case. That section is applicable only to a case of cumulative relief sought by the plaintiff. *Motigauri v. Pranjivandas* (6 Bom. 302), followed.—*Kashinath Narayan v. Govinda bin Piraji* (15 Bom. 82).

This section applies only to complaints and memoranda of appeals in suits and not to applications or appeals therefrom. See *Upadhya Thakur v. Persidh Singh* (23 Cal. 723, F. B.), *ante*, p. 43.

Distinct subjects.—

Held (Spankie, J., dissenting), that the words "distinct subjects" in s. 17 of Act VII. of 1870, mean distinct causes of action or distinct kinds of relief. For example, if a suit is brought for the recovery of an in-

* The reference to s. 9 of the old Code (VIII. of 1859) is altered in accordance with s. 9 of the new Code (XIV. of 1882).

heritance, although the inheritance might consist of distinct properties and properties differing in kind, the fee would be computed on the aggregate value of the one subject of the suit. But where a suit is brought (i) for the recovery of an inheritance, (ii) for an injunction, and (iii) for the amount of a bill of exchange accepted by the defendant, each of these three subjects would be distinct, and the fee chargeable would be the aggregate of the fee chargeable in respect of each subject if sued for in a separate suit. *Per Spankie, J.*,—Such words mean every separate matter distinctly forming a subject of the claim.—*Chamaili Rani v. Ram Dai* (1 All. 552, F. B.).

Suit for damages.—Injunction by plaintiff.—Plaintiff ordered to pay damages for wrongful injunction.—Appeal.—One B L sued B D and others for damages on account of the alleged wrongful cutting and removing of certain trees by the defendants. The plaintiff before hearing obtained an injunction against the defendants restraining them from removing certain trees which they had already cut. On the hearing of the suit the Court being of opinion that such injunction had been unnecessarily obtained by the plaintiff ordered him, under s. 497 of the Code of Civil Procedure, to pay damages. The plaintiff appealed both against the main decree and as to the award of damages, but paid only the same Court-fee which he had paid on his plaint. The memorandum of appeal was reported by the Munsarim of the Appellate Court to be duly stamped but at the hearing the Court dismissed the appeal *in toto* on the ground of insufficiency of Court-fee. On these facts it was held that the plaintiff-appellant ought to be allowed an opportunity of amending his memorandum of appeal either by relinquishing his claim to relief against the award of damages or by making good the deficiency in the Court-fee.—*Misr Behari Lal v. Bhugwan Das* (W. N., 1893, p. 220).

Held, that the words "distinct subjects" in s. 17 of the Court Fees Act, 1870, mean distinct and separate causes of action. *Chamaili Rani v. Ram Dai* (1 All. 552) observed on. The plaintiff sued his brothers and a nephew for his share, according to the Hindu Law of inheritance and under a will, of the *moveable* and *immoveable* property of his deceased uncle, by the *cancelment of a deed* of gift of the *immoveable* property in favour of the nephew. *Held, per Stuart, O. J.*, and *Straight, J.*, that under s. 17 of the Court Fees Act, 1870, the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees to which the plaint or memorandum of an appeal in separate suits for the moveable and immoveable property would have been liable under that Act. *Per Stuart, O. J.*,—The meaning of the words "distinct subjects" in s. 17 of Act. VII. of 1870, is shown with sufficient clearness in that section itself when it states that "the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of

appeal in suits embracing separately each of such subject would be liable under the Act." This I think can only mean that the two or more distinct subjects are to be chargeable as being *distinct causes of action*. The words "plaints or memoranda of appeal in suits" in the section show this to my mind conclusively, and it is not enough that distinct subjects should be merely separate and distinct matters embraced in the claim. This s. 17 plainly relates to multifarious suits which are allowable by s. 45 of the Code of Civil Procedure, Act X. of 1877, a circumstance which appears to me to supply us at once with the principle by means of which we may solve the difficulty, showing that "distinct subjects" must for the purpose of the Court Fees Act be distinct and separate claims or causes of action in single and separate suits, but which for the purpose of jurisdiction, or the convenience of the procedure may be united in one suit, and this is shown still more clearly in s. 17 itself, where "distinct subjects" are described as distinct subjects "in suits embracing separately each of such subjects," in other words, as I understand this section, even if we had not the light thrown upon the point by s. 9 of the old and s. 45 of the new Code of Procedure (1877) distinct and separate causes of action in distinct and separate suits. *Per Spankie, J.*,—Two or more "distinct subjects" of a suit are the "subject-matters of a suit" in which several "causes of action" have been united under the provisions of s. 45 subject to the rules contained in s. 44 of Act X. of 1877, and therefore in such a suit the plaint or memorandum of appeal is chargeable with the aggregate amount of the fees to which each plaint or memorandum of appeal would be chargeable under the Act. The words, be it observed, are "would be liable," not "is liable," under the Act. There must, therefore, be several *causes of action*, and these several causes of action must be united in the same suit, and the subject-matters, "or two or more distinct subjects" of each cause of action united in the same suit, must be charged as if each cause had not been so united in the same suit, but had been taken into Court by a separate plaint or memorandum of appeal. *Per Oldfield, J.*,—That Court-fees were leviable in this case on the plaint and memorandum of appeal on the total value of the claim, the suit not being one of the nature to which s. 17 of the Court Fees Act referred.—*Mul Chand v. Shib Charan Lal* (2 All. 676, F. B.).

Suit on three hundis.—Distinct causes of action.—In a suit upon three different hundis executed on the same date by one of the defendants in favour of the other three defendants, and by them assigned to the plaintiff, and not paid on maturity, *held*, that each hundi afforded a separate cause of action, that the suit embraced three separate and distinct subjects, and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the Court-fees to which the memoranda of appeal in suits embracing separately each of such subjects would

be liable under the Court Fees Act.—*Parshotam Lal v. Lachman Das* (9 All. 252; s. c., W. N., 1887, p. 42).

Execution of part of Decree.—Construction of the section.—See *Fulchand v. Bai Lichha* (12 Bom. 66), ante, p. 41.

Suit for specific moveable property or for compensation.—See *Anur Nath v. Thakur Das* (3 All. 181), ante, p. 19.

Suit for cost of rebuilding a wall.—Plaintiff sued upon an agreement with defendants for the payment by the latter of part of the cost of rebuilding a party wall, and also, apart from agreement, for a contribution towards the cost of the same. *Held*, that the suit did not embrace two distinct subjects.—*Jivraj v. Sajan* (P. J., 1887, p. 8).

Khata containing several items.—Where the plaintiff sought to recover a sum as the balance due to him by the defendant on a *khata* alleging that the amount claimed represented the aggregate sum payable in respect of seven separate transactions which took place on different dates. *Held*, that the several items in the *khata* constituted "distinct subjects" within the meaning of s. 17 of the Court Fees Act.—*Ramchandra v. Appaji* (P. J., 1887, p. 271).

Suit for possession and mesne profits.—

In a suit for possession of a house and compensation, in the nature of rent, for its use and occupation, *held* (Spaukie, J., dissenting), that the suit embraced "distinct subjects" within the meaning of s. 17 of the Court Fees Act, 1870, and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable. See *Chedi Lal v. Kirath Chund* (2 All. 682, F. B.), ante, p. 41.

Dissented from in *Kishori Lal Roy v. Sharut Chander Mozoomdar* (8 Cal. 598; s. c., 10 C. L. 14. 859, F. B.).

For the purposes of determining the stamp-duty payable on an appeal to the High Court in a suit for possession and for mesne profits, the claims for possession and mesne profits are to be taken as one entire claim. *Chedi Lal v. Kirath Chand* (2 All. 682, F. B.) dissented from.—*Kishori Lal Roy v. Sharut Chander Mozoomdar* (8 Cal. 598; s. c., 10 C. L. R. 353, F. B.).

A suit upon one and the same cause of action for possession of immoveable property, and for mesne profits or damages for the wrongful retention of such property, is not a suit embracing two or more distinct subjects within the meaning of s. 17 of Act VII. of 1870. *Chamaili Rani v. Ram Dai* (1 All. 55); *Mul Chand v. Shib Charan Lal* (2 All. 676); *Chedi Lal v. Kirath Chand* (3 All. 682); and *Kishori Lal Roy v. Sharut Chander Mozoomdar* (8 Cal. 598) discussed.—*Reference under the Court Fees Act, 1870, s. 5* (16 All. 401; s. c., W. N., 1894, p. 124).

Suit for profits of several years.—

In an appeal in a suit for recovery of profits under s. 93 (h) of the N.-W. P. Rent Act, in respect of several years, the proper Court-fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed, and not one calculated separately on the amount of profits claimed for each year.—*Muhammad Malik Khan v. Nirhai Bibi* (7 All. 761; s. c., W. N., 1885, p. 21b).

Suit for accounts and production of defendant's books.—

See *Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219), ante, p. 26.

Redemption-suit.—Claim by the mortgagor for rent in the same suit.—

See *Rama Varma Rajah v. Kadar* (16 Mad. 415), ante, p. 38.

Suit by claimant to attached property.—Declaratory relief.—Court-fee.—

Where a claimant, whose objection under s. 278 of the Code of Civil Procedure has been disallowed, brings a suit, and makes the judgment-creditor, who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property, and not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes, and in such a suit, it is immaterial whether the claim is that the property is the plaintiff's, and not liable to attachment, or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s. 278 of the Code brings his suit, and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings, parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor, and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment creditor's decree, there are two substantial declarations asked for.—*Moti Singh v. Kaunsila* (16 All. 108, F. B.; s. c., W. N., 1894, p. 109).

See also *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.), under s. 28, post, and *Gobind Nath Tiwari v. Gajraj Mati Taurayan* (13 All. 889), under Sch. II., Art. 17 (III.), post.

Suit by reversioners.—

Alienations by a Hindu widow.—When reversioners sue to have declared invalid as against them alienations made by a Hindu widow, a Court-fee of Rs. 10 must be paid in respect of each of the alienations in question.—*Daiwachilaya Pillai v. Ponnathai* (18 Mad. 459).

Maximum limit.—

The section is subject to the proviso at the end of Sch. I, Art. 1.—The rule laid down in s. 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of Art. 1, Sch. I. of that Act, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is, under that proviso, Rs. 8,000.—*Raghobir Singh v. Dharam Kuar* (3 All. 108, F. B.).

Civil Procedure Code, s. 45, para. 2.—

The para. runs thus :—" But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion, or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary for the separate disposal thereof."

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of

Written examinations of complainants.

wrongful restraint, or of any offence other than an offence for which police-officers may arrest with-

out a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Remission of payment.—See notes under Sch. II., Art. 1, cl. (b), *post*.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with fee:—

I. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.

II. [*Repealed by Act XII. of 1891, first Schedule.*]

III. Written statements called for by the Court after the first hearing of a suit.

IV. [*Repealed by Act XIII. of 1889, s. 2, and Schedule.*]

V. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

VI. Plaints and processes in suits before District Panchayats in the same Presidency.

VII. Plaints in suits before Collectors under Madras Regulation XII. of 1816.

VIII. Probate of a will, letters of administration, "and, save as regards debts and securities, a certificate under Bombay Regulation VIII. of 1827,"† where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

* For further exemptions see I. G. Notn, No. 4650, 10th Sept. 1889, Appendix C, *post*.

† The words quoted have been substituted for the original words "and certificate mentioned in the first Schedule to this Act annexed, No. 12," by Act VII. of 1889, s. 13 (2).

IX. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

X. Application relating to a supply for irrigation of water belonging to Government.

XI. Application for leave to extend cultivation, or to relinquish land when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

XII. Application for service of notice of relinquishment of land or of enhancement of rent.

XIII. Written authority to an agent to distrain.

XIV. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

XV. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

XVI. Petition, application, charge, or information respecting any offence when presented, made or laid to or before a Police-officer, or to or before the Heads of Villages, or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

XVII. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

XVIII. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.

XIX. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

XX. Application for the payment of money due by Government to the applicant.

XXI. Petition of appeal against the chankidari assessment under Act No. XX. of 1856, or against any municipal tax.

XXII. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.*

* See Act I. of 1894.

XXIII. Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpur*).

XXIV.* Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.

Clause III.—

Written statements before the hearing of suit.—

A written statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any Court-fee, and may be written on plain paper (s. 110 of Act X. of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp-duty (s. 19 of Act VII. of 1870).—*Nagu v. Yeknath* (5 Bom. 400).

A written statement filed by the defendant in a civil suit at the first hearing does not under the existing law require a Court-fee stamp.—*Cherag Ali v. Kadir Mahomed* (12 C. L. R. 367).

Set off.—

See the Code of Civil Procedure (XIV. of 1882), s. 111. A set off under that section has the same effect as a plaint in a cross-suit.

Court-fee on set off.—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set off as the price of cloth which, he alleged, the plaintiff had sold on his account on commission. *Held*, that the Court-fee payable on the claim for set off was the same as for a plaint in a suit.—*Amir Zama v. Nathu Mal* (8 All. 396).

Followed in *Bai Shri Majirajbai v. Narotam Hargovan* (13 Bom. 672).

A written statement containing a claim of set off is chargeable with the Court-fee which would be payable on a plaint of that nature.—*Bai Shri Majirajbai v. Narotam Hargovan* (13 Bom. 672).

In a suit in which the plaintiff sued, as son of a deceased vakil, to recover the amount of a promissory note and bond executed by the defendant to his deceased father, the defendant alleged in his written statement that the plaintiff's father had collected funds belonging to him, as his vakil, exceeding the amount due on the promissory note and bond, and asked for a decree for the difference. *Held*, (1) that the written statement must be regarded as a plaint in regard to the set off and should have been stamped accordingly; (2) that if the plaintiff claimed as the

heir and representative of his father, the set off was rightly pleaded; (3) that when a memorandum of appeal is insufficiently stamped the deficient stamp-duty should be levied by the Appellate Court.—*Chennappa v. Raghunatha* (15 Mad. 29).

Clauses X. and XI.—

Having regard to the relation subsisting between the Government and the agriculturists of this country in the matter of irrigation, it was clearly inexpedient to impose a fee which might operate as a restriction to free communication between the people and the officers of Government in regard to the irrigation of their land. The conditions of the settlement in Madras were also considered to call for the exemption, from any fee, of petitions or applications to extend cultivation or relinquish land.—*Proceedings of the Legislative Council* (I. G., 26th Feb. 1870).

For other exemptions see I. G. Notn., No. 4650, 10th Sept. 1889, cl. (11), Appendix C, *post*.

Clause XIV.—

Affidavits.—

See notes under *Sec. II., Art. 1, post*.

Clause XVII.—

Appeal by judgment-debtor in custody.—

A judgment-debtor, whilst in custody, applied to the Court, under Ch. XX. of the Civil Procedure Code, to be declared an insolvent. The application was refused, and the judgment-debtor appealed against the order refusing his application. No Court-fee was affixed to the memorandum of appeal. *Held*, that no Court-fee was leviable under cl. 17 of s. 19 of the Court Fees Act.—*Kali Prasad Banerji v. Gibbourns & Co.* (10 Cal. 61; s. c., 18 O. L. R. 156).

Clause XVIII.—

Public servant.—

For the definition of "Public servant" see s. 21 of the Indian Penal Code, XLV. of 1860.

* This clause has been substituted for the original by the Indian Christian Marriage Act (XV. of 1872), s. 2. The original clause ran thus:—"Petitions under the fourteenth and fifteenth of Victoria, chapter forty (*An Act for marriages in India*), section five, or under Act No. V. of 1852, section nine."

Complaint by Civil Court.—

A complaint preferred by a Munsiff under s. 168 of the Criminal Procedure Code need not, though it do not bear the seal of the Munsiff's Court, be on stamped paper.—*Reg. v. Sajjan valad Vithu* (5 Bom. H. C., Cr. Ca., 104).

Complaints by Municipal officers.—

No process-fee is leviable on complaints made by municipal officers, and the accused are not liable to refund sums illegally levied from the complainants as process-fees.—*Queen-Empress v. Khajaboy* (16 Mad. 423).

See also *Reg. v. Avji bin Naru* (8 Bom. H. C., C. C., 22), under s. 31, post.

Clause XX.—

An application by a pensioner for a life certificate to enable him to draw his life pension at some other place, or through an

agent, is not strictly an application for the payment of money, and does not fall under this exemption; it must be held to fall within Art. 1 (a), Sch. II., as an application to a Magistrate by a person having dealings with the Government for which a stamp of one anna is required; if the officer applied to is not a Magistrate, but a Revenue officer subordinate to a Collector, a stamp of 8 annas would be required under cl. (b) of the same Article.—*Punj. Stamp Manual*, 1888, p. 83, para. 124.

Clause XXII.—

Applications for compensation made under any law relating to the acquisition of property for public purposes were rendered necessary by the Acts of the Government, and consequently, could not justly be subjected to any fee.—*Proceedings of the Legislative Council* (I. G., 26th Feb. 1870).

CHAPTER III A.***PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.**

19A.† Where any person, on applying for the probate of a will or

Relief where too high a Court-fee has been paid. letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a Court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the Court-fee which would have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Similar authority was given under I. G. Letter, No. 2025, 15th August 1872.

* This Chapter has been inserted by Act XIII, of 1875, s. 6.

† Compare 55 Geo. III., c. 184, s. 40.

19B.* Whenever it is proved to the satisfaction of such Authority that

Relief where debts due from a deceased person have been paid out of his estate.

an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole

gross amount or value of the estate, would have occasioned a less Court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Similar provision was contained in I. G. Notn., No. 2504, 18th April 1873.

Payment of debts.—

The fees payable for letters of administration under Act VII. of 1870, Sch. I., cl. 11, is to be calculated on the amount or value of the property in respect of which the letters are sought, without deducting therefrom the debts due by the deceased. Where letters are granted limited for the purpose of collecting the rent of a house, the duty is to be assessed on the value of the house.—*In the Goods of Ram Chandra Das, Deceased* (9 B. L. R., O. C., 30; s. c., 18 W. R. 153).

The full duty must always be paid in the first instance; and if the Deputy Commissioner thinks any refund should be allowed on account of debts paid, he may submit an application, through the Local Superintendent of Stamps, to the Financial Commissioner for sanction.—*Punj. Fin. Commr.'s Book Cir.*, No. 13, 15th May 1873.—*Punj. Stamp Manual*, 1888, p. 85, para. 127.

Value of the estate.—Uncertainty of recovering debt.—

The uncertainty of recovering debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of probate of a will or letters of administration to such estate.—*In the Goods of Beake* (13 B. L. R., Ap., 24; s. c., 21 W. R. 397).—*In the Goods of Ram Chunder Ghose* (24 Cal. 567).

Property subject to the payment of an annuity.—

Where it appeared that property disposed of by a will was bequeathed to the testatrix

subject to the payment thereof of an annuity for life to a person who survived her, held, that the *ad valorem* fee prescribed by Sch. I., cl. 11, of the Court Fees Act, ought to be levied upon the value of the property, less the capitalized value of the annuity.—*In the Goods of Rushton* (3 Cal. 786).

Appointment by will.—

Where a person having a life interest in a fund with a general and absolute power of appointment thereover exercises such power by will, no *ad valorem* fee is payable in respect of such fund under the Court Fees Act, 1870, Sch. I., Art. 11.—*In the Goods of Julia Oram* (12 B. L. R., Ap., 21; s. c., 21 W. R. 245).

Property subject to mortgage.—Valuation for Court-fee.

When letters of administration are granted in respect of property which is subject to a mortgage, the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act, 1870, is the value of that which the administrator is to deal, viz., the value of the entire property, less the amount of the encumbrance.—*In the Goods of Peter Innes* (8 B. L. R., Ap., 43; s. c., 16 W. R. 253).

By Art. 11, Sch. I., Act VII. of 1870, an *ad valorem* duty of 2 per cent. on the amount or value of the estate is chargeable for probate of a will where the amount or value of the property, in respect of which probate is granted, exceeds Rs. 1,000. The term "value" in the Act, apparently means market-value, and the market-value of mort-

* Compare 55 Geo. III., c. 184, s. 51.

gaged property is the equity of redemption. An executor having applied for probate in respect of property which was alleged to be charged and mortgaged in excess of its value, no fee was charged for the probate of the will. In such a case, however, if it be found when the accounts are filed that sufficient stamp-duty has not been paid, payment of any deficiency can be enforced.—*In the Goods of Charles Edouard Maclean* (6 N.-W. P. 214).

Where the property in respect of which probate is sought is mortgaged, the amount of the mortgage-incumbrance must be deducted from the market-value of the property, and

the probate charged on the balance.—*In re Will of Ramchandra Lakshumanji* (1 Bom. 118).

ANNUITY.—Valuation for probate duty.—

For the purpose of determining the probate-fee in respect of an annuity, the word "value" in the Court Fees Act (VII. of 1870), Sch. I., cl. 11, must be taken to mean the market-value of the annuity and not ten times the amount of a yearly payment.—*In re Will of Ramchandra Lakshumanji* (1 Bom. 118).

19C. Whenever* a grant of probate or letters of administration has been or is made in respect of the whole* of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Similar provision was contained in I. G. Notn., No. 2623, 24th April 1874.

First duty not paid under this Act.—

The Administrator-General obtained, before the passing of the Court Fees Act, letters of administration, limited till the will was proved; and the fixed duty prescribed by the Indian Succession Act was paid in respect of such limited letters of administration. Afterwards, the will being proved, a petition was presented for general letters of administration with the will annexed. This was after the passing of the Court Fees Act. *Held*, that the fee of two per cent. prescribed in the Act must be paid on the amount of the property in respect of which the letters of administration were granted, irrespective of the Rs. 10 paid on the former letters of administration.—*In the Goods of W. G. Chalmers* (6 B. L. R., Ap., 137; s. c., 21 W. R. 46, note).

Followed in *In re Gasper* (3 Cal. 733; s. c., 2 C. L. R. 436).

Executors obtaining a second grant of probate subsequent to the enactment of the Court Fees Act of 1870 (the first grant having been taken out previously to that enactment) are not exempted from the payment of the *ad valorem* duty chargeable under that Act,

although the full fee then chargeable by law had already been paid at the time when the first probate was taken out.—*In re Gasper* (3 Cal. 733; s. c., 2 C. L. R. 436).

First duty paid under this Act.—

The Administrator-General obtained letters of administration with a copy of an exemplification of probate of the will of the deceased annexed, such probate having been granted by the District Registrar of Cork (Ireland). The full *ad valorem* duty prescribed by the Court Fees Act, Sch. I., cl. 11, was paid on the amount or value of the property. Subsequently the Administrator-General produced a document referred to in the will of the testator, and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed, and of the document produced as part of the will in lieu of the former letters of administration, Norman, J.—“I think it clear that only one *ad valorem* fee is payable by the Administrator-General. But I think it is right, and in fact necessary, that the letters of administration under which he acts, should bear an *ad valorem* stamp.....Application should be made to the Collector showing that the former letters of administration have been cancelled, and new letters issued simply in order to

* The word “such” following the word “Whenever” is omitted, having been repealed by Act XII. of 1891, first Schedule.

correct a mistake under the orders of the High Court. He will probably issue a new stamp without a charge."—*In the Goods of W. P. Mason* (6 B. L. R., Ap., 189).

Where duty was paid on former letters of administration, which were afterwards cancelled, the duty so paid was allowed to be deducted from the amount payable for fresh letters of administration.—*In the Goods of Peter James* (8 B. L. R., Ap., 43; s. c., 16 W. R. 253).

Duty paid in England.—

A testator died in England, and his executrix proved his will there, and then in this Court, paying duty in each country on the assets there. On the death of the executrix, the Administrator-General obtained letters of administration *de bonis non* of the testator's unadministered property valued at a greater sum than the sum on which duty was originally paid in this country by the executrix, but which sum was made up of assets obtained from England upon which duty had already been paid there. *Held*, that as the assets were within the jurisdiction of this Court at the time of the grant of administration, and the Administrator-General could not have obtained possession of them otherwise than by virtue of the grant, they were liable to the *ad valorem* fees prescribed by cl. 11, Sch. I., of the Court Fees Act.—*In the Goods of Murch* (4 Cal. 725).

The testator, a member of the firms of G & A and Co. of Calcutta, and O G and Co. of Liverpool, died in England, leaving a will, of which he appointed G in England and O in Calcutta, his executors. As partner in the Calcutta firm, the testator was entitled to a share in an indigo concern, and in certain immoveable property in Calcutta, and his share in these properties was, on his death, estimated and the money-value thereof paid to his estate by the firm in Liverpool, and probate-duty had been paid thereon by G in obtaining probate of the will in England. Shortly after the testator's death, the indigo concern was contracted to be sold and the testator's name appearing on the title-deeds as one of the owners, O applied for probate of the will to enable him to join in the conveyance and in any future sale of the other immoveable property. An unlimited grant of probate was made to O, who claimed exemption from probate-duty in respect of the properties on the grounds (a) that duty had already been paid in England on the testator's share in them, and (b) that there was no amount or value in respect of which probate was to be granted in India. *Held*, on a case referred by the taxing officer, that O was not entitled, in obtaining probate, to exemption

from the probate-duty payable under Sch. I., cl. 12, of the Court Fees Act, in respect of the properties.—*In the Goods of Gladstone* (1 Cal. 168).

S died in England in October, 1896, and probate of his will was obtained in England on the 1st December 1896. He left a large amount of property and credits in Bombay and he was a partner in the firm of David Sassoon and Company, which had its head office in London, and had branches in Bombay and Calcutta. *Held*, that no probate-duty was payable on the value of the share of the deceased as a partner in the firm of David Sassoon and Company on the properties of the firm situated in British India at his death. Farran, C. J.,—"...That being the nature of the asset, the next question is, where is it situated. The mode of solving that question is pointed out in *Laidlay v. The Lord Advocate* (15 Ap. Ca. 468).....Where, then, is the business of David Sassoon and Company carried on—in India or in London, for this cannot be said to be carried on at both places? Where is the government of the firm situated? I have come to the conclusion that London is the locality in which the business which is the property of the partnership is situated. Upon the statements in the petition and the evidence of Mrs. S. there cannot be, I think, any doubt upon that point, if there is only one business. The Advocate-General, however, contends relying upon the case of *Beaver v. The Master in Equity of the Supreme Court of Victoria* (1895, Ap. Ca. 251) and seeks to bring the circumstances of the present case within that ruling, but the circumstances of the two cases are very different and I think that in this case there is but one business.....The real head of the firm to whom its good-will belongs resides in London and new and important matters are only entered into by the Bombay firm after reference to London.....In short, I feel unable to point out a single circumstance which enables me to say that the Bombay business is a distinct business from the London business."—*In the goods of Sir Albert A. D. Sassoon* (21 Bom. 679).

Property must be in British India.—

Probate-duty is payable only on assets which at the date of the testator's death are in British India.—*In re Eschiel Joshua Abraham* (21 Bom. 139).

Leave reserved to second executor.—

No stamp-duty is payable under the Court Fees Act, 1870, on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted.—*In the Goods of Bibee Amerrun* (15 W. R. 496).

19D.* The probate of the will, or the letters of administration of the

Probates declared valid as to trust property though not covered by Court-fees.

effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors and administrators for recovering,

transferring, or assigning any moveable or immoveable property whereof

or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court-fee was paid on such probate or letters of administration.

In Notification No. 2004, dated 14th July 1871, the Governor-General in Council remitted the fees chargeable under Sch. I., Art. 11, in respect of probate of wills or letters of administration "in so far as such wills or letters of administration relate to property which a deceased person was possessed of or entitled to, not beneficially, but as trustee for any other person or persons, provided that this remission shall not extend to cases in which a trustee has the power of appointing or otherwise conferring a beneficial interest in the trust property." Retrospective effect was given to this order from 1st April 1870, by Notification No. 2135, dated 22nd March 1872. These orders, having been made under the authority of s. 35, and not having been rescinded, have still the force of law, so far as they are not inconsistent with s. 19 D.—*Punj. Stamp Manual*, 1888, pp. 85-6, *para.* 129.

But see now Notn., No. 4650, 10th Sept. 1889, Appendix C, *post*.

Trust-property.—

Joint property of two brothers.—The following case was referred to the Chief Justice under s. 5 of the Court Fees Act by the Taxing Officer:—"A and B were brothers and were joint in estate. A has died unmarried, leaving no relative except B. B has obtained an order for letters of administration of the property and credits of the deceased consisting of half a share (1) of moneys in the Government Savings Bank deposited in the name of the deceased; (2) of Government securities standing in the name of the deceased; (3) of a family dwelling-house and small outstanding dues. The other half share of the property above specified is claimed by B as belonging to him. The letters of administration will enable the administrator to deal with the whole of the moneys and Government securities deposited or standing in the name of the deceased, and not only of his half share. The question submitted for determination is, whether or not B's half share is to be treated as trust property within the meaning of the Financial Resolution, No. 2004, dated 14th July 1871, and exempted from the payment of the two per centum *ad valorem* fee prescribed by the Court Fees Act, Sch. I., Art. 11." The resolution above mentioned ran as follows: "In the exercise of the power vested in him by s. 35 of the Court Fees Act, 1870, the Governor-General is pleased to remit, in the whole of British India, the fees chargeable under Sch. I., Art. 11 of the said Act in respect of probate of wills or letters of administration, in so far as such wills or letters of administration relate to property which a deceased person was possessed of or entitled to,

not beneficially, but as a trustee for any other person or persons; provided that this remission shall not extend to cases in which a trustee has the power of appointing or otherwise conferring a beneficial interest in the said property." The Judgment of the Court was delivered by Couch, C. J.—B's half share should be treated as trust property, and be exempted from the two per centum *ad valorem* fee.—*In the Goods of Brindabun Ghose* (11 B. L. R., Ap., 39; s. c., 19 W. R. 230).

Joint family property.—The deceased who was a member of a joint Hindu family governed by Mitakshara Law, left a will, of which he appointed his brothers the executors and trustees. The brothers as executors, applied for probate, but claimed exemption from the payment of probate-duty on the ground that the property was "joint ancestral property" which would pass by survivorship. The petition stated that in the life-time of the testator he and his brothers, out of the income of the ancestral estate, purchased from the Corporation of Calcutta some plots of land, which were conveyed to them as *tenants in common*; that the effect of this was to vest an undivided one fourth share in the testator, which, on his death, would pass, not to the remaining co-parceners under the rule of survivorship, but to his legal representatives; and that in order that effect might be given to the rule of survivorship it was necessary to obtain probate. *Held*, that the property, though conveyed to the brothers as *tenants in common*, vested in them as trustees for the benefit of all the co-parceners, and consequently was not liable to duty.—*In the Goods of Pokurmukh Asgur-wallah* (23 Cal. 980).

The term "property" in cls. 11 and 12 of Sch. I. of the Court Fees Act includes not only property to which the deceased was beneficially entitled during his life-time but also all property which stood in his name as trustee, or of which he was possessed *benami* for others.—*In the goods of H. B. Beresford, and in the Goods of T. H. Maddock* (7 B. L. R., O. C., 57; s. c., 15 W. R. 456).

On the death of a Hindu lady who had succeeded to her father's property for the estate of a Hindu daughter, it appeared that certain Government Promissory Notes, which formed a portion of the father's property, were then standing in her own name. On an application by the sons for letters of administration to her estate, *held*, that on her death, the grand father's estate became in the hands of her representatives trust-property, in respect of which no duty was payable under the Court Fees Act.—*In the Goods of Joy-money Dossee* (14 B. L. R. 184).

By a deed of settlement property was conveyed by T to L upon trust to pay the income to T during her life and after her death to hold the property for all her children for the time being in such manner and form as she should by deed or will appoint. T afterwards intermarried with G, and shortly previous to her death made a will in which she appointed her husband and the trustee of the settlement executors. The husband alone applied for and obtained probate of the will. *Held*, that the *ad valorem* duty prescribed by Sch. I., Art. 11, of the Court Fees Act was not payable in respect of such trust-property. The words of that clause mean property which the deceased was possessed of or entitled to.—*In the Goods of George* (5 B. L. R., Ap., 188; 15 W. R. 457, note).

Community of property.—The deceased, F, was a European subject of the German Empire. He married a lady of Solingen in Rhenish Prussia, where the Code Napoleon is

in force. There, in contemplation of the marriage, the parties entered into a contract whereby it was provided that "there should be and rule, universal community of his and her present and future moveable and immoveable property," which contract placed the parties under the law of France respecting community of property between husband and wife. Under that law, a husband and wife have an equal interest in the property comprised in the community; on the death of either, the property is divided into two parts, of which one part goes to the survivor and the other to the heirs or to donees under a testamentary disposition. *Held*, that on the death of F, only one-half of the property was chargeable with the *ad valorem* duty payable under Art. 11 of Sch. I. of the Court Fees Act, the other half being trust property, which should, under the provisions of s. 19D of that Act, be exempted from payment of such duty.—*In the Goods of Frosschman* (20 Cal. 575).

19E.* Where any person, on applying for probate or letters of administration, has estimated the estate of the

Provision for case where too low a Court-fee has been paid on probate, &c.

deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full Court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper Court-fee, without any deduction of the Court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a Court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid* in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper Court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which would have been at first paid thereon.

As to the manner in which the deficiency | Notn., No. 1522, 20th March 1885, Appendix
under this section is to be made up see I. G. | B, post.

* Compare 55 Geo. III., c. 184, s. 41.

Civil Court cannot review a decision under this section.—

S. 19 E applies to applications by persons who have taken out probate. For the protection of the revenue, however, s. 19 G provides a penalty. The duty of determining whether too low a Court-fee is paid is imposed on the Revenue Authority, and the Civil Court has no power of reviewing his decision and order-

ing the penalty to be repaid if the decision happens to be wrong.—*Maneckji Edalji Chachia v. The Secretary of State for India in Council* (P. J., 1896, p. 751).

Remission of penalty payable under this section.—

See the Probate and Administration Act (VI. of 1889), s. 20, under s. 19 G, *post*.

19F.* In case of letters of administration in which too low a Court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Administrator to give proper security before letters stamped under section 19E.

19G.† Where too low a Court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months‡ after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper Court-fee.

Recovery of penalties and forfeitures.—Remission.—

(1) Any penalty or forfeiture under s. 19 G or s. 19 H of the Court Fees Act, 1870, may on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under s. 19 E of the said Act.

—*The Probate and Administration Act* (VI. of 1889), s. 20.

19H. [*Repealed by the Guardians and Wards Act, VIII. of 1890, s. 2 and Schedule.*]

* Compare 55 Geo. III., c. 184, s. 42.

† Compare 55 Geo. III., c. 184, s. 43.

‡ Here the words and figures "after the first day of April 1875, or" are omitted, having been repealed by Act XII. of 1891, first Schedule.

ACT No. XI. 1899.

THE COURT FEES AMENDMENT ACT, 1899.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor-General on the 10th March 1899.

An Act to further amend the Court Fees Act, 1870.

Whereas it is expedient to further amend the Court Fees Act, 1870 ;
It is hereby enacted as follows :—

Short title and com- 1. (1) This Act may be called the Court
mencement. Fees Amendment Act, 1899; and

(2) It shall come into force at once.

Object of the amendment.—

“As the law now stands the duty is payable not on the application for, but on the grant of, probate or letters of administration. A person to whom sections 187 and 190 of the Indian Succession Act, 1865 (X. of 1865), do not apply and who is not bound to produce probate or letters of administration to establish his rights in succession may attain all he desires by merely obtaining on his application an order for the grant of probate or letters of administration, without actually taking out, and paying the fees prescribed for, the probate or letters of administration applied for.

This result, cannot, obviously, have been contemplated, and the latter part of clause 2 of the Bill is intended to guard against it.”—*Statement of Objects and Reasons* (I. G., 3rd July 1897, Pt. V., p. 112).

“The object of the amendment is firstly, to provide a check on the under-valuation of estates by the persons applying for probate of a will or for letters of administration; and, secondly, to place on a more satisfactory footing the existing law relating to the realization of the duties payable on probates and letters of administration.”—*Proceedings of the Legislative Council* (I. G., 3rd July 1897, Pt. VI., p. 206).

Addition of four new sections after section 19G, Act VII., 1870.

2. After section 19G of the Court Fees Act, 1870, the following sections shall be added, namely:—

Notice of applications for probate or letters of administration to be given to Revenue Authorities, and procedure thereon.

19H. (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority of the Province.

(3) The Collector, within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the

petitioner (either in person or by agent), and take evidence, and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court, before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court, when so moved as aforesaid, shall hold or cause to be held, an inquiry, accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

Clause (3).—

"There is no means provided by which the Revenue Officers of Government can check the sufficiency of a petitioner's valuation and it is proposed by this Bill to remove what experience has shown to be a defect in the law of some practical importance, by adding to the Court Fees Act (VII. of 1870) a section enabling the Chief Revenue Officer of the District to inspect the records of any case in which application for probate or letters of administration has been made and to prove in Court any under-valuation of the estate

concerned."—*Statement of Objects and Reasons* (I. G., 3rd July 1897, Pt. V., p. 112).

"Section 19H has been drafted so as to empower the Collector to intervene by examining the applicant for probate or letters of administration, or by adducing other evidence of the under-valuation of the estate concerned, in order to secure the payment of the proper amount of Court-fees; and the section provides that for this purpose, he shall have access to the records."—*Proceedings of the Legislative Council* (I. G., 3rd July 1897, Pt. VI., p. 207).

19I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

Payment of Court-fee.—

"The object of this amendment is, in the first place to make it clear that the fee is to be paid on the valuation of the assets by the affidavit of the applicant in the first instance. The second part is intended to make it compulsory upon the Court to grant probate at once upon a proper affidavit of valuation being before it, reserving the question of the investigation that may be made by the Revenue Authorities afterwards and not to delay the grant of probate, because probates and letters of administration, where they are compulsory, are absolutely necessary for the administration of the estate, and if they are not granted quickly the delay may cause loss to the estate and therefore it is necessary to have these grants made at once."—*Proceedings of the Legislative Council* (I. G., 18th March 1899, Pt. VI., p. 81).

"Under section 243 of the Indian Succession Act (X. of 1865) an application for probate or letters of administration, if duly made and verified, is conclusive for the purpose of authorising the grant of probate or letters of administration, and sections 187 and 190 provide that no right under a will or to the property of an intestate, can be established in any Court unless probate or administration, as the case may be, has been granted. But the Indian Succession Act does not apply to the case of Hindus, Muhammadans, or Buddhists, or to persons specially exempted (s. 832) by the Governor-General in Council, and the case of such persons is governed by the Hindu Wills Act (XXI. of 1870) and the Probate and Administration Act (V. of 1881). The latter Act while reproducing the provisions of section 243 of the Indian Succession Act, omits the provisions contained in sections 187 and 190, with result that persons to whom the Act of 1881, and not the Indian Succession Act, applies, find that if they apply for probate or for letters of administration, and if their applications are admitted as duly made and verified, a certificate of the fact may have the same effect as if they incurred the expense involved in actually taking out formal probate or administration. They may thus derive all the benefit of the security given them by the law without the liability to pay the fees which are involved in taking out formal probate or administration, whereas persons to whom the Act of 1865 applies are compelled, as already explained by sections 187 and 190 of the Act, to obtain formal probate or administration before any rights under any will or to the property of an intestate can be established. This is clearly inequitable and the question of the best means of remedying the defect in the law has resulted in the decision to amend the Court Fees Act by the addition of a section on the lines of section 14 of the Succession Certificate Act The second amendment is in substance, the extension to applications for probates and letters of administration of the provisions of the law which already apply to applications for succession certificates under the Succession Certificate Act of 1889."—*Proceedings of the Legislative Council* (I. G., 3rd July 1897, Pt. VI., p. 207).

Court Fees Amendment Act XI. of 1899.—Court Fees Act, 1870, ss. 3 and 19H, and Sch. I, Art. 11.—In an application for probate or letters of administration the *ad valorem* fee prescribed by Statute should be paid to the satisfaction of the Court. Such payment must be made to the Registrar and certified by him or by the Taxing Officer where an exemption is claimed and allowed. This certificate should be produced to the Court with the application and affidavit of valuation.—*In the Goods of Omda Bibes* (26 Cal. 407).

19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty or forfeiture under section 19G may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor

or administrator as if it were an arrear of land revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E, or of any Court-fee under section 19E in excess of the full Court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

"Owing to this duty being levied as a Court-fee on a grant of probate or letters of administration, the result was produced that although the probates had been stamped by the Court on payment of a duty, yet if the duty were insufficient the documents would be improperly stamped and an objection could be raised to its admissibility in evidence or even its validity. Now, inasmuch as probates and letters of administration are letters of authority to administer property, it was, of

course, exceedingly inconvenient that they should be subjected to any invalidity of this kind. They stand on an entirely different footing from that of ordinary documents not properly stamped, and now that there is a power on the part of the Revenue Authorities to apply for the excess revenue and to collect it themselves, it is unnecessary to continue these side pressures at all"—*Proceedings of the Legislative Council* (L. G., 18th March 1899, Pt. VI., p. 83).

Addition of Schedule to Act VII., 1870.

3. To the Court Fees Act, 1870, the following Schedule shall be added, namely :—

(See *Sch. III., p. 100, post.*)

Application by the Administrator-General.—The form of affidavit prescribed by Act XI. of 1899 indicates that it does not

apply to an application by the Administrator-General. See *In the Goods of P. J. Ardall* (26 Cal. 404).—*Addenda.*

Repeal.

4. Section 20 of the Probate and Administration Act, 1889, is hereby repealed.

CHAPTER IV.

PROCESS-FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

I. The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue* Courts established within the local limits of such jurisdiction; †

II. The fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

III. The remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

For rules under this section see Appendix B, post.

Commission for local investigation.—

A commission issued to an ameen to hold a local investigation for the purpose of ascertaining the amount of mense profits is not a process within the meaning of cl. 1 of s. 20 of the Court Fees Act.—*Jagat Kishore Acharjee Chowdhry v. Dina Nath Chuckerbutty Chowdhry*. (17 Cal. 281).

Failure to pay Court-fee for issue of summons.—

Where the plaintiff in a suit failed to deposit talabana required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit,

and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under s. 110 of Act VIII. of 1859 (Civil Procedure), on a day previous to that fixed for the hearing of such suit, held, that such order of dismissal did not preclude the plaintiff from re-instituting a fresh suit.—*Gulab Rai v. Jiwan Ram* (2 All. 318).

Processes issued by the Collector under the Civil Procedure Code.—

As the law stands, no fees for the service and execution of processes, issued by the Collector in the exercise of powers under s. 320 of the Civil Procedure Code, are leviable.—*B. G. Resolution, No. 1619, (J. D.), 11th March 1881*.

21. A table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process-fees.

Number of peons in District and Subordinate Courts.

22. Subject to rules to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

* In the Punjab the words "and Revenue" have been repealed by Act XVII. of 1887, s. 2 and Schedule.

† See Act XIV. of 1869 (Bombay Civil Courts), s. 42.

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto ;

and for the purposes of this section, every Court of Small Causes established under the Provincial Small Cause Courts Act, 1887,* shall be deemed to be Subordinate to the Court of the District Judge.

Number of peons in the Mofussil Small Cause Courts.

The Court Fees Act (VII. of 1870), s. 22, distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices, or orders, but also for the

execution of other processes, such as warrants of arrest, or of attachment and distress.—*Dharam Chand Lal v. Queen-Empress*, (22 Cal. 596).

23.† Subject to rules to be framed by the Chief Controlling Revenue Authority and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. [*Repealed by Act XII. of 1891, first Schedule.*]

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps. 25. All fees referred to in section 3, or chargeable under this Act, shall be collected by stamps.

The practice of receiving on plain paper, accompanied by the value of the proper stamp, documents which the law requires to

be written on stamp paper, is strictly forbidden.—*Beng. Stamp Manual*, 1890, p. 118, para. 8.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by Notification in the *Gazette of India*, from time to time direct.

For Notification under this section see Appendix B, *post*.

Stamps not bearing the words "Court Fees."—

A certificate having been granted on an ordinary stamp of requisite value, it was not properly stamped in accordance with the Court Fees Act (VII. of 1870) as required by s. 17 of the Succession Certificate Act (VII. of 1889), because it did not bear upon it the words "Court Fees" as directed in the Notification of the Governor-General, No. 361, dated 18th April 1883. *Held*, that though s. 26 of the Court Fees Act (VII. of 1870)

provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor-General of India in Council may by Notification from time to time direct, and that though, the Governor-General has issued such Notification, still the direction in the Notification, that the stamp should bear the words "Court Fees," was not a matter on which he had authority to give any direction under the terms of s. 26 of the Court Fees Act, and therefore could only be regarded as a departmental order, the non-observance of which could not invalidate the stamp for the purpose of the Act. A certificate of heirship stamped with the proper stamp and granted

* The reference to the repealed Act XI. of 1865 is altered in accordance with Act IX. of 1887, s. 2 (2), (3).

† Section 23 has been repealed in the Punjab by the Punjab Land Revenue Act XVII. of 1887.

by the Political Agent of a Native State, must be recognized by the Civil Courts in British India "as having the same effect in British India as a certificate granted under this Act"

as provided by s. 17 of Act VII. of 1889, and under s. 20 precludes the granting of a certificate by a Civil Court.—*Annapurnabai v. Lakshman Bhikaji Vakharkar* (19 Bom. 145).

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

And such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

For rules under this section see Appendix B, *post*.

Number of stamps.—

Held, that there is no illegality in making up the stamp-fee chargeable in an appeal by means of any number of stamps of smaller values.—*Mirsa Dawd Ali v. Syud Nadir Hossein* (16 W. R. 153). See to the same effect *Tarinee Churn Nyabachusputty v. Taranath Gooko* (12 W. R. 449) and *Huro Monee v. Kristo Indro Shaha* (17 W. R. 220).

But *held*, when a stamp of the full value is

available, parties ought to use as small a number of stamps, as they can.—*Ranee Khajooroonissa v. Mussamut Rohimoonnissa* (16 W. R. 152).

Renewal and refund of stamps.—

S. 27 of the Court Fees Act allows Local Governments to make rules for regulating the *renewal* of damaged or spoiled stamps, but the Act says nothing about *refunding* the value of damaged or spoiled Court-fee stamps. Such refunds are however allowed by I. G. Resolution (Fin.) No. 132, dated 11th January 1888. See Appendix B, *post*.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But if any such document is through mistake or inadvertence received, filed, or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct ; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Document presented before, but deficiency in stamp supplied after, the period of limitation.—

Where a plaint, insufficiently stamped, was duly presented to a Court before the expiration of the time allowed by the Limitation Act, and was retained by the Court, the plaintiff being ordered within a limited time to supply the requisite additional stamped paper, which was done, *held* to be in time, although the formal order for registration of the plaint was not made until the period of limitation applicable to the case had expired.

—*Hidayat Ali v. Musumat Maeraj Begum* (3 N.-W. P. 202).

Under Act IX. of 1871 (Limitation) a suit is instituted when a plaint is presented to a proper officer. The plaintiff, the limitation of whose suit expired on 5th October, presented his plaint to the Subordinate Judge on 20th September, improperly stamped, and it was returned to him with an order to make the deficiency good, without any time being specified within which the order was to be carried out. A vacation supervened. The deficiency was supplied, and the plaint

accepted on 4th November or 11 days after the Court opened. The defendant pleaded limitation. *Held*, that the date of presentation being taken as the date of institution for the purpose of calculating limitation, the suit was instituted within time.—*Mussumat Begum v. Syud Yusuf Ali* (6 N.-W. P. 139).

The Deputy Registrar has no authority to make an order returning a petition of appeal, when the stamp-fee paid upon it is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court. But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time.—*Ambur Ali v. Kali Chand Doss* (24 W. R. 258).

See the cases on p. 11, ante.

For the purpose of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented. When an Appellate Court returns an insufficiently stamped memorandum of appeal in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied.—*Sheo Pratab Singh v. Sheo Golam Singh* (2 All. 875).

Where a petition of appeal was presented unstamped within the period of limitation, and the stamp was ultimately affixed after the appeal would have been barred by limitation, *held*, following *Skinner v. Orde* (L. R., 6 I. A. 126) that the appeal was in time.—*Patcha Saheb v. Sub-Collector of North Arcot* (15 Mad. 78).

The date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees are subsequently put in, so as to make it admissible as a plaint. *Skinner v. Orde* (2 All. 241; L. R., 6 I. A. 126) and *Chennappa v. Raghunatha* (15 Mad. 29) referred to. *Balkaran Rai v. Govind Nath Tiwari* (12 All. 129) not followed.—*Moti Sahu v. Chhatri Dass* (19 Cal. 780).

A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the plaintiff was ordered to supply the requisite stamp paper within seven days. This order was complied with within the time appointed, and the plaint was duly registered. *Held*, that the suit should be taken as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred. *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129) distinguished and doubted.—*Huri Chokherbutty v. Naimuddin Mahomed* (20 Cal. 41).

But see the following cases:—

A memorandum of appeal is a document

included in the first and second Schedules to the Court Fees Act (VII. of 1870), and is a document within the meaning of ss. 4, 25, 28, and 30 of the Act, and therefore cannot be filed or recorded in or received by the High Court unless and until the proper Court-fee in respect of it is paid, and is of no validity unless and until it is properly stamped. Consequently, if it is not, when tendered, properly stamped, it is not at that time a memorandum of appeal within the meaning of s. 541 of the Code of Civil Procedure, and the appeal cannot be regarded as having been at that time presented within the meaning of s. 4 of the Limitation Act, or as valid for any other purpose, except in the events specified in s. 28 of the Court Fees Act. When a memorandum of appeal, which when tendered, was insufficiently stamped, has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act. In the case of a High Court such an order can be made only by a Judge, and by him only in cases of "mistake or inadvertence." A plaint contained a prayer for a declaration (i.) that certain property was the joint property of the plaintiff, and (ii.) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and as a foundation for the latter relief alleged collusion, fictitious transactions, and want of title. The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree, and stamped their memorandum of appeal with a stamp of Rs. 10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report, dated the 7th November, by the officer appointed under s. 5 of the Court Fees Act, "Report will be made on receipt of record." The Judge made an order, "Admit, subject to stamp report," and the memorandum was then received by the office and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of Rs. 615; on the 9th November the taxing officer ordered that the deficiency should be made good, and on the 8th December 1888 it was made good. At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time or admitted, and that it could not be heard. *Held*, that there was before the Court no valid appeal as to the merits of which the Court could give a decision. *Held*, also, that the stamp of Rs. 10 was insufficient, inasmuch as two distinct declarations were asked for and obtained, and were by the appeal sought to be set aside; and it was not the province of the taxing officer or of the Judge or Court on a question of the sufficiency of a stamp or fee to consider whether a plaintiff or an appellant was asking for more declarations or reliefs than were required for his protec-

titu.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

The plaintiff filed his plaint on the last day of limitation on an insufficient stamp, and, being required by the Court to make good the deficiency within a certain time did not do so until two days after the expiration of that period. The Court however accepted the plaint and issued notice to the defendant but made an order to the effect that it would be open to the defendant to object to the admissibility of the plaint. The defendant did object, and the plaint was in consequence rejected. *Held*, that even if the Court had power to extend the period of limitation, the order admitting the plaint subject to the defendant's objections showed no intention of extending the time for payment of the residue of the Court-fee; neither could it be taken as an order under s. 28 of the Court Fees Act. The plaint was properly rejected. *Held*, also, that the plaintiff not having made an application to be allowed to amend his plaint could not be permitted to prosecute his suit in respect of so much of his claim as was covered by the amount originally paid as Court-fee.—*Dharm Narain Lal v. Jagmohan Pande* (W. N., 1891, p. 166).

When a Court fixed a time under cl. (a) or (b) of s. 54 of the Code of Civil Procedure, it must be a time within limitation, s. 54 does not give a Court any power to extend the ordinary prescribed period of limitation for suits. *Moti Sahu v. Chhatrai Das* (19 Cal. 780) and *Yakut-un-nissa Bibi v. Kishoree Mohun Roy* (19 Cal. 747) discussed.—*Jaini Prasad v. Bachu Singh* (15 All. 65; s. c., W. N., 1893, p. 29).

On the 7th April, being the last day on which such application could be made, under the provisions of s. 38 of the Presidency Small Cause Courts Act, an application was made to the High Court under that section for the re-hearing of a suit which had been dismissed by the Small Cause Court. The application was made by petition at the rising of the Court, and not being a regular motion day, the hearing of the matter was postponed till the 9th April. On that day, on the application being brought on it appeared that the petition only bore a 7 rupee stamp, instead of one of the much larger value required by s. 71 of the Act. It was contended on behalf of the petitioner that the deficiency could then be made up, and that he was entitled to have the application heard. *Held*, that this could not be done. The eight days allowed by s. 38 expired on the 7th April, and had the application been then considered it could not have been received but must have been rejected, as s. 71 requires the proper fee to be paid before the application can be received. Although the consideration of the application was deferred to the 9th April, that made no difference, as the eight days had expired before the petition was in such a condition that it could be received.—*Narendranath Bose v. Abinash Chunder Roy* (18 Cal. 445).

A memorandum of appeal, insufficiently stamped was presented in the Court of the District Judge, on the 24th May, the last day allowed for it by limitation, and was received, and a memorandum endorsed on it, "Appeal within time; stamp-duty insufficient, Rs. 204 odd." On the 27th May an order was passed by the District Judge, and endorsed on the memorandum, allowing the appellant one week within which to supply the deficiency, and this period was, on the 5th June, further extended by another fortnight being allowed. On the 18th June the full stamp-duty was paid by the applicant. *Held*, that the fact of the case did not bring it within either the spirit or the letter of s. 28 of the Court Fees Act, and that these proceedings were not such as were contemplated by that section or to put the appeal in order when the stamp-duty was received on the 18th June, and that the appeal had been properly dismissed as being out of time. *Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129) referred to.—*Yakut-un-nissa Bibee v. Kishorree Mohun Roy* (19 Cal. 747).

To remedy the hardship caused by these decisions an express provision has been made by the Code of Civil Procedure, s. 582 A (which was added to the Code by Act VI. of 1892, s. 3) which relieves the applicants in cases of insufficiency of stamp caused by mistake on their part. See the section under the following heading.

Mistake or inadvertence.—

Application for review.—*Limitation Act*, s. 5.—On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a Judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it, "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889, the deficiency pointed out by the Munsarim was made good. On the 28th May the Judge admitted the application on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree. *Held*, that s. 6 and the first paragraph of s. 28 of the Court Fees Act. (VII. of 1870) were applicable; that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; that there was no presentation within ninety days of an application which could have been received; that no sufficient cause had been shown within the meaning of s. 5 of the Limitation Act, for not making the application within ninety days; and that the application was consequently barred by limitation and ought to have been rejected. *Held*, also, that the application should have been presented to the Judge and not to the Munsarim.—*Munro v. The Cawnpore Municipal Board* (12 All. 67; s. c., W. N., 1889, p. 197).

The words "mistake or inadvertence" mean mistake or inadvertence on the part of the Court or its officers and not on the part of the applicant or his advisers.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

Mistake on the part of the appellant or applicant.—"If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation, but is written upon paper insufficiently stamped, and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamp, the memorandum of appeal or application shall have the same effect, and be as valid, as if it had been properly stamped. Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake to be fixed by the Court.—*The Code of Civil Procedure XIV. of 1882, s. 582 A (as amended by Act VI. of 1892, s. 3).*

See *Badri Prasad v. Kundan Lal* (15 All. 117), *ante*, p. 5.

See also s. 5 of the Indian Limitation Act XV. of 1877.

Power of High Court to levy Court-fee.—

Held that if a document which ought to bear

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary

Amended document.

to impose a fresh stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

Document.—

A memorandum of appeal is a document within the meaning of this section.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c., W. N., 1890, p. 39).

Cancellation of stamps.—Impressed and adhesive stamps.—

S. 26 of the Court Fees Act contemplates that the stamps to be used to denote any fee chargeable under that Act may be either impressed or adhesive or partly impressed and partly adhesive, and yet s. 30 enacts that the stamp is in every case to be cancelled before the document which bears it is acted

upon under the Court Fees Act has been used in the High Court and the mistake or inadvertence which permitted its reception in a lower Court without being properly stamped, comes to light in the High Court, any Judge of that Court may, under s. 28 of the Court Fees Act, direct that it should be properly stamped.—*Chedi Lal v. Kirath Chand* (2 All. 682).

Power of the Appellate Court.—

When a memorandum of appeal is insufficiently stamped, the deficient stamp-duty should be levied by the Appellate Court.—*Chennappa v. Raghunatha* (15 Mad. 29).

Power when to be exercised.—

See *Mahadei v. Ram Kishen Das* (7 All. 528), *ante*, p. 38.

Head of the office.—

The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such but as a taxing officer; but it refers to the head of a public office, such as the Board of Revenue.—*Balkaran Rai v. Gobind Nath Tiwari* (12 All. 129, F. B.; s. c. W. N., 1890, p. 39).

Ss. 9, 10, 11 and 28 of the Court Fees Act.—S. 54 of the Civil Procedure Code.—

See notes, *ante*, p. 39.

upon in any Court or office. From this the necessary inference is that the Legislature intended the figure-head of the stamp to be punched out whether the stamp is adhesive or impressed, and this direction of the law is binding upon all Courts and offices.—*B. G. Resolution, No. 6641, 8th Sept. 1883, R. D.*

Return of plaint after cancellation of stamp.—

There is no provision in the Code of Civil Procedure for the return of a plaint to a plaintiff after it has been admitted, and the Court-fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the Court-fee stamps have been

cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The executive Government alone have the power to remit Court-fees, and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a Subordinate Court to admit such a document.—*Jagjivan Javherdas Seth v. Magdum Ali* (7 Bom. 487).

But held in *Prabhakar Bhat v. Vishwambhar Pandit* (8 Bom. 313, F. B.), that when, after a trial has begun or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional Court-fees are payable. The pre-existing state of the law as recognized by the tribunals is one of the chief means of interpreting laws of procedure.

Followed in *Kandu v. Konda* (8 Mad. 62).

The ruling in the case of *Prabhakar Bhat* (8 Bom. 313) which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction, prevailing in the Mofussil Courts, and on the Appellate side of the High Court of Bombay, does not govern, and is distinguishable from, cases in which there have been decrees passed on the plaint.—*In re Bai Amrit* (8 Bom. 380).

Return of plaint when all the defendants do not reside within jurisdiction.—Where the Court under section 20 of the Code of Civil Procedure stays proceedings when all the defendants do not reside within its jurisdiction, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any Court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.—*The Code of Civil Procedure*, 1882, s. 21.

CHAPTER VI.

MISCELLANEOUS.

31. I. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

II. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

III. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

IV. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

Object of the section.—

Under this section provision was made for compelling the repayment, to the complainant, of the amount of the fee paid by him on the institution of a complaint in the Criminal Court when such complaint was substantiated and resulted in the conviction of the offender. In the opinion of the Committee, where a complaint resulted in the conviction of the accused person and the complainant was thereby shown to have sustained a *bona fide* injury, he was entitled to be re-imbursed in the amount which he

had been compelled to pay to obtain the Magistrate's interference in his behalf. The policy of levying any fee in cases of this kind was strongly impugned in some parts of the country. Nevertheless the Committee was agreed that it should be retained at the reduced amount fixed by the Bill, subject to the provision for repayment in certain cases. The fact that this result might be obtained by the operation of the provisions of the Criminal Procedure Code had not been overlooked. But, under that provision of the law, the action of the Magistrate was merely

discretionary, whereas in these cases it was thought that the complainant should recover his disbursement in the prosecution of his charge as a matter of right.—*Proceedings of the Legislative Council* (I. G., Supplement, 26th Feb. 1870).

The section does not apply to complaints under the Cattle Trespass Act.—

The illegal seizure and detention of cattle, to which s. 14 of Act III. of 1857 (Cattle Trespass) refers, is not an "offence" within the meaning of s. 31, and Sch. II., Art. 1, cl. (b) of the Court Fees Act (VII. of 1870). Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.—*Reg. v. Avji bin Naru* (8 Bom. H. C., Cr. Ca., 22).

See also *Queen-Empress v. Khajaboy* (16 Mad. 428), ante, p. 48.

A Magistrate having under s. 22 of the Cattle Trespass Act, 1871, adjudged a seizure of cattle to be illegal directed the captor, under s. 31 of the Court Fees Act, 1870, to pay the complainant the costs of stamp and process-fee incurred in prosecuting the complaint. *Held*, that s. 31 of the Court Fees Act did not apply. *Held*, also that under s. 22 of the Cattle Trespass Act such costs could be awarded to the complainant as compensation for the loss caused by the seizure and detention of cattle.—*Shaikh Hussain v. Sanjivi* (7 Mad. 345).

Case disposed of by a Court of Session.—

* When a case to which s. 31 applies is dis-

posed of by a Court of Session, such Court, and not the committing Magistrate, is the proper authority to order the repayment of the fee.—*Bom. H. C. Resolution, No. 326, 2nd March 1871.*

Order to pay the fee.—Fine.—

An order to pay a fee under s. 31 of Act VII. of 1870, is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court and may be retained in deposit pending an appeal, where an appeal lies.—*Pro., July 20, 1870* (5 Mad. H. C., Ap., 28).

But *held* by the Calcutta High Court, that an order passed by a Magistrate under s. 31 of the Court Fees Act, directing an accused person to pay to the complainant the Court-fee on the petition of complaint, is no part of sentence so as to make it a sentence of fine within the terms of s. 413 of the Code of Criminal Procedure (1882), and an order, therefore, sentencing an accused person to 14 days' rigorous imprisonment and to pay the costs is not appealable.—*Madan Mandul v. Haran Ghose* (20 Cal. 687).

Mode of recovering fines.—

"Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary."—*The General Clauses Act X. of 1897, s. 25.*

See s. 386 of the Code of Criminal Procedure V. of 1898.

32.* [*Repealed by Act XII. of 1891, first Schedule.*]

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases of documents for which proper fee has not been paid.

34.† (1) The Local Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Sale of stamps.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

* This section amended Acts VIII. of 1859 and IX. of 1869.

† This section has been substituted for the original by Act XII. of 1891, second Schedule.

This section has been substituted for the original by Act XII. of 1891, second Schedule. The original section ran as follows :—

“In the General Stamp Act, 1869 (repealed by Act I. of 1879, which in its turn is repealed by Act II. of 1899), section 48 shall be read as if for the words and figures ‘Act No. XXVI. of 1867 (to amend the law relating to stamp-duties)’ the words and figures ‘the Court Fees Act, 1870’ were substituted.”

S. 48 of Act No. XVIII. of 1869 gave the Local Governments power to make rules for the sale of stamps. The last para. of the section ran thus :—“Any person appointed to sell such stamps and stamped paper who knowingly disobeys any such rule shall be punished with simple imprisonment for a term which may extend to six months or with fine not exceeding five hundred rupees, or with both.”

Before the substitution of the new section it was held that the sale of Court-fee stamps without a license was no offence.—*Empress v. Jaku Namdar* (4 All. 216, F. B.; s. c., W. N., 1882, p. 23).

S. 34 (3) of the Court Fees Act, as amended by Act XII. of 1891, has been interpreted to mean that the sale of stamps by a private person is prohibited by the section as it stands, independently of any rules which may

have been framed by the Local Government under the section. Court-fee stamps may not then now be transferred from hand to hand by private sale. Any breach of this rule can be easily detected, as the name of the first purchaser is enfaced on the label by the vendor.

It has, however, been held by the Government of India, on a reference made to them by the N.-W. P. Government, that although the Court Fees Act of 1870 was amended in 1891 for the special purpose of prohibiting the unlicensed sale of Court-fee stamps, still the prohibition would not be applicable to the case of a legal practitioner or banker buying a stock of stamps for use in his own business and affixing them as occasion arises to the document he has to draw up in the course of that business, the cost of such stamps being recovered from his client or customer with the rest of his charges. That as the stamps would be used on the specific documents which form part of the business between the banker or pleader and his customer or client, there would be no sale of separate stamps such as the Act is intended to prohibit, and therefore no infringement of the law.

—*C. P. Stamp Manual*, 1893, p. 39, para. 11.
—*C. P. Cir.*, No. X., 29th Nov. 1894, from the *Supt. of Stamps to Deputy Commrs.*

For rules under this section see Appendix B, *post*.

35. The Governor-General of India in Council may, from time to time, by Notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second Schedules to this Act annexed, and may, in like manner, cancel or vary such order.

For Notification under this section see Appendix C, *post*.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

Saving of fees to certain officers of High Courts.

SCHEDULE I.*

Ad valorem Fees.

Number.	Proper Fee.
1.† <i>Plaint or memorandum of appeal</i> (not otherwise provided for in this Act), presented to any Civil or Revenue Court except those mentioned in sections 3—	
When the amount or value of the subject matter in dispute does not exceed five rupees	Six annas.
When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees	Five rupees.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees	Ten rupees.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Fifteen rupees.
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Twenty rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Twenty rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Twenty-five rupees.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

Plaint.—

Application for set off.—See notes, *ante*, p. 57.

Suits to set aside documents.—See notes, *ante*, p. 25.

Application to file an award.—The proper Court-fee upon an application to file an award under s. 525 of the Code of Civil Procedure, is the Court-fee prescribed for applications, and

not the Court-fee upon a plaint.—*Bijadhr Bhugut v. Monohur Bhugut* (10 Cal. 11); *Palut Bhagut v. Monohur Bhagut* (13 C. L. R. 171).

Suits for accounts and winding up of partnership.—See notes, *ante*, p. 28.

Application for the assistance of a Collector in ejecting a ryot.—See *Pyari Mohan Mookerjee v. Kina Bewa* (2 B. L. R., A. C., 226; s. c., 1 W. R. 90), *ante*, p. 86.

* For Reductions and Remissions of duty chargeable under this Act see I. G. Notn., No. 4650, 10th Sept. 1889, Appendix C, *post*.

† To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this Schedule.

Number.

Proper Fee.

Suit for waste land.—In a suit under s. 5, Act XXIII. of 1888, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, by an objection to the sale or other disposition of such land, the stamp should be calculated as on a plaint.—*Greesh Chunder Roy v. Collector of Sylhet* (7 W. R. 349).

Suit relating to share of land.—In valuing a suit relating a share of land, the rental of the share is to be the criterion of the stamp.—*Ram Buksh Thakoor v. Ajoodhya Lall* (2 W. R. Misc., 45).

Exemptions.

See s. 19 (V.), (VI.) and (VII.), *ante*.

Remission of duty.

See I. G. Notn., No. 4650, 10th Sept. 1889, cls. (3), (22) and (28), Appendix C, *post*.

Reduction of duty.

See the Notification above referred to, cl. (20).

Memorandum of appeal.

Valuation.—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence on the decision.—*Pro.*, Nov. 15, 1870 (5 Mad. H. C., Ap., 44).

Order refusing to file in Court agreement to refer to arbitration.—*Appeal.*—*Held*, by the Full Bench (Oldfield, J., dissenting) that an order refusing to file in Court an agreement to refer to arbitration is not appealable. *Per* Oldfield, J., that such an order is appealable, and the Court-fee payable on the memorandum of appeal is *ad valorem* fee computed on the value of the subject-matter in dispute in the appeal. *Janki Tewari v. Gayan Tewari* (3 All. 427) distinguished by Stuart, C. J., and followed by Oldfield, J.—*Daya Nand v. Bakhtawar Singh* (5 All. 383, F. B.).

Appeal from an order under the Gujarat Talukdars Act.—A second appeal from an order rejecting an application for execution of a partition decree under the Gujarat Talukdars Act (Bombay Act VI. of 1888) is not within the contemplation of Art. I. of Sch. I., but is an application falling under Art. I. of Sch. II. of the Court Fees Act (VII. of 1870). The Court-fee stamp of two rupees should, therefore, be affixed to the memorandum of the appeal.—*Jamsang Devabhai v. Goyabhai Kikabhai* (16 Bom. 408).

Appeal from an order under s. 331 of the Civil Procedure Code.—A memorandum of appeal from an order under s. 331 of the Civil Procedure Code, 1882 (obstruction by claimant to attached property) should be stamped with an *ad valorem* duty as provided by Art. 1,

Sch. I. of the Court Fees Act (VII. of 1870).—*Narayan Raghunath v. Bhagvant Anant* (10 Bom. 238; s. c., P. J., 1886, p. 258).

Appeals from orders under s. 381 of Act X. of 1877 (Civil Procedure) as amended by s. 52 of Act XII. of 1879, are chargeable with the same Court-fee as is required in the case of appeals from decrees.—*Mahbub v. Umrao Begum*; *Shayama Sunduri Dasi v. Robert Watson and Co.* (8 Cal. 720; s. c., 11 C.L. R. 98).

Ground of appeal going to the whole of the respondent's decree.—See *Bujhawan Rai v. Mahund Lal* (15 All. 112), *ante*, p. 47.

Decree for share subject to the payment of money.—*Appeal.*—Where the plaintiff in a partition suit appealed against so much of the decree of the first Appellate Court as rejected part of his claim and saddled him with liability to pay Rs. 3,200 due on a mortgage before getting his share of certain properties that were subject to that mortgage, and it was contended by the plaintiff that the portion of the appeal that objected to the payment of such sum was liable to no Court-fee on the ground that the award of his claim for the property subject to the mortgage right ought not to place him in a worse position than the rejection of his claim for that property wholly, because in the latter case he would have to pay Court-fees sufficient to cover the value of such property only. *Held*, that Court-fees should be paid on Rs. 3,200, the amount of liability, which, according to the decree, rested upon the appellant and which it was his object by appeal to get rid of.—*Rabin v. Salem* (P. J., 1887, p. 307).

Appeal as to costs.—See notes, *ante*, p. 51.

Pre-emption.—*Appeal.*—See *Hafis Ahmad v. Sobha Ram* (6 All. 488), *ante*, p. 32.

High Court not bound by the decision of the Lower Court.—In deciding the amount of stamps to be borne by the memorandum of appeal the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint.—*Motgauri v. Pranji-vandas* (6 Bom. 302).

Followed in *Kashinath Narayan v. Govinda bin Piraji* (15 Bom. 82).

Suit upon hypothecation-bond.—*Second appeal.*—See *Ramasami v. Subbusami* (18 Mad. 508), *ante*, p. 18.

Decree for ejectment and mesne-profits.—*Appeal.*—See *Brahmayya v. Lakshminarasimham* (16 Mad. 310), *ante*, p. 36.

Appeal against decree by instalments.—*valuation.*—See *Luikhun Chunder Ash v. Khoda Buksh Mondul* (19 Cal. 272), *ante*, p. 48.

Appeal from a decision under s. 322 B of the Civil Procedure Code.—An appeal from the decision by which a disputed claim is settled under s. 322 B of the Code of Civil Procedure (Act X. of 1877) is cognizable as a miscellane-

Number.	Proper Fee.
ous appeal, i.e., an appeal from a decree not passed in a regular suit.— <i>Srinivasa Ayyangar v. Peria Tambi Nayakar</i> (4 Mad. 420).	Where a Zemindar values his right to measure at a certain amount, the petition of appeal must be written on a regular stamp according to such valuation and not upon a stamp used for miscellaneous petitions.— <i>Ooma Churn Biswas v. Shib Nath Bagchee</i> (8 W. R. 14).
Dissented from in <i>Ahmad Khan v. Madho Das</i> (7 All. 565).	<i>Mortgage-lien.—Appeal.</i> —Where the appeal by the mortgagee was not with reference to the property, but to a mortgage lien, held, that the valuation for the purpose of stamp in such appeals should be with reference to the value of the lien for the mortgage debt incumbrance, and not with reference to the value of the mortgaged property.— <i>Mahomed Sheerun Khan v. Misser Koondun Lall; Bheeka v. Nund Kishore</i> (Agra, F. B., 158).
An appeal from the decision of a dispute under s. 322 B of the Civil Procedure Code (XIV. of 1882) falls directly within the exception of Art. 11, Sch. II. of the Court Fees Act (VII. of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an <i>ad valorem</i> stamp. <i>Srinivasa Ayyangar v. Peria Tambi Nayakar</i> (4 Mad. 420) dissented from.— <i>Ahmad Khan v. Madho Das</i> (7 All. 565; s. c., W. N., 1884, p. 99).	<i>Special appeal to the High Court, Appellate Side.</i> —Petitions of special appeal to the High Court at Bombay on its Appellate Side must be stamped according to the scale contained in cl. 11, of Sch. B. of Act XXVI. of 1867.— <i>Ex-parte Desai Kalyanrai Hakumatrai</i> (4 Bom. H. C., A. C., 145).
<i>Appeal from an order enforcing execution of an arbitration award.</i> —An appeal from an order enforcing execution of an arbitration award or from a decree under s. 325 of Act VIII. of 1859 (Civil Procedure) was brought on an insufficient stamp. The appeal was dismissed without prejudice to the appellant bringing a fresh appeal on a full stamp required for a regular appeal.— <i>Syad Wali Alam v. Mussamat Bibi Nasran</i> (3 B. L. R., Ap., 104; s. c., 12 W. R. 50).	<i>Over-valuation of appeal.—Excess stamps.</i> —See <i>In the matter of G. H. Grant, Petitioner</i> (14 W. R. 47), <i>ante</i> , p. 39.
<i>Appeal from an order rejecting a plaint.</i> —An appeal from an order rejecting a plaint for misjoinder is a miscellaneous appeal and if it is rejected an appeal from the order of rejection is also of the nature of a miscellaneous appeal, and is to be valued and stamped as such.— <i>Kosella Koer v. Beharee Patuk</i> (12 W. R. 70.)	<i>Appeal.—Compromise.</i> —No refund of stamp duty can be allowed when a suit is compromised pending the hearing of an appeal preferred.— <i>Land Mortgage Bank of India v. G. P. Methus</i> (4 B. L. R., Ap., 96).
<i>Appeal from an order that a party had no locus standi in an execution case.</i> —An appeal from an order of the lower Appellate Court, declaring that a party who claimed to be in possession of property taken in execution of a decree to which he was no party and with which he had no concern had no <i>locus standi</i> in the execution case is in the nature of a miscellaneous appeal and should be on a stamp for an ordinary petition.— <i>Mohesh Chunder Banerjee v. Chunder Monee Dabee.</i> —(9 W. R. 139).	Not otherwise provided for.— The words relate back to ss. 7 and 8 of this Act and not to s. 17, and the proviso at the end of this Article applies generally and fixes the maximum fee leviable on any plaint or memorandum of appeal at Rs. 3,000.— <i>Per Straight J.—Raghobir Singh v. Dharam Kuar</i> (8 All. 108, F. B.).
<i>Appeal from an order rejecting an application to set aside ad ex-parte decision.</i> —The stamp required for a petition of appeal from an order rejecting an application to set aside an ex-parte decision under s. 119, Act VIII. of 1859 (Civil Procedure) was a two-rupee stamp. Such an appeal was treated as a summary and not a regular appeal.— <i>Parbutty v. Gir-dharee Lall</i> (4 W. R., Misc., 15).	An appeal from an order of a Lower Appellate Court on an application under s. 9, Act VI. (B. C.) of 1862, "not being otherwise provided for" by the Court Fees Act, may be admitted on a 6 annas stamp.— <i>Puriag Bhuggut v. W. M. Donzelle</i> (14 W. R. 21).
<i>Appeals in Measurement cases.</i> —Petitions of appeal in cases to obtain an order for measurement may be written on the stamp used for miscellaneous petitions.— <i>Smith v. Nundun Lall</i> (6 W. R., Act X., 13).	Exemption.— See s. 19 (XXI.), <i>ante</i> . Reductions of duty.— See I. G. Notn., No. 4650, 10th Sept. 1889 clis. (6), (20) and (41), Appendix C, <i>post</i> . With this Article read s. 12, <i>ante</i> , with notes.

Number.	Proper Fee.
2. Plaint* in a suit for possession under "the Specific Relief Act, 1877, section 9."†	A fee of one-half the amount prescribed in the foregoing scale.

Similar provision was made by I. G. Notn., No. 2127, 27th July 1877. See also I. G. Notn., No. 4650, 10th Sept. 1889, cl. (5), Appendix C, *post*.

The plaintiff sued for possession. It was not clear from the plaint whether it was under s. 9 of the Specific Relief Act, or whether it was an ordinary suit. The plaint was stamped with half the ordinary stamp. The Subordinate Judge treated it as an ordinary suit and awarded the plaintiff's claim on title. In appeal his decree was confirmed on the ground that his order was final under s. 9 of the Specific Relief Act, and second appeal was filed in the High Court. The Subordinate Judge had awarded the claim

without finding that the plaintiff had been dispossessed within six months. *Held*, that the plaintiff should be allowed to make good the deficiency in stamp due as in an ordinary suit for possession, in which case the decree of the Lower Appellate Court was to be reversed and the appeal remanded for decision; and that if the said Court-fee be not paid, the second appeal should be converted into a petition under extraordinary jurisdiction, and the Subordinate Judge's decree was to be reversed under s. 622, as he had acted in that jurisdiction in awarding the claim without finding that the plaintiff had been dispossessed within six months.—*Ramchandra v. Balaji* (P. J., 1894, p. 346).

3.† [Repealed by Act VIII. of 1871 (Registration Act)].

4. **Application for review§** of judgment, if presented on or after the ninetieth day from the date of the decree.

The fee leviable on the plaint or memorandum of appeal.

5. **Application for review §** of judgment if presented before the ninetieth day from the date of the decree.

One-half of the fee leviable on the plaint or memorandum of appeal.

See notes under s. 14, *ante*.

Application for review.—Valuation.—

The stamp-fee on an application for review of judgment must be calculated on the amount which would be obtained if the review were granted, and not necessarily on the whole value of the suit.—*Pro.*, Jan. 16, 1872 (7 Mad. H. C., Ap., 1).

The present Act provides for the levy of *ad valorem* fees on applications for review of judgment in substitution for the fixed fee formerly chargeable thereon. This enhanced charge was recommended to discourage the practice, which was said to have become prevalent, of seeking to obtain the re-hearing of a suit through an application for review of judgment on the most frivolous grounds by which the time of the Court was needlessly wasted.—*Proceedings of the Legislative Council* (I. G., Supplement, 26th Feb. 1870).

When a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the

judgment, the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment (Act VII. of 1870, Sch. I., Arts. 4 and 5).—*In re Manohar G. Tambkar* (4 Bom. 26).

For the purpose of ascertaining the Court-fee to be paid under Sch. I., Art. 5, of the Court Fees Act (VII. of 1870), upon an application to review an appellate decree, the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed, and not the fee which was leviable on the plaint nor—where the decree sought to be reviewed was passed on appeal under s. 10 of the Letters Patent from an appellate judgment of a Division Bench—the fee which was leviable on the memorandum of the appeal before such Bench.—*Husaini Begam v. The Collector of Muzaffarnagar* (11 All. 176, F. B.; a.c., W. N., 1889, p. 27).

* Here the words "or memorandum of appeal" following the word "Plaint" have been omitted, having been repealed by Act XX. of 1870.

† The words quoted have substituted for the words "Act No. XIV. of 1859 (to provide for the limitation of suits), section fifteen" by Act XII. of 1891, Sch. II.

‡ Art. 3 ran thus :—"Petition under the Indian Registration Act, section fifty-three." Fee the same as under Art. 2.

§ See s. 623 of the Code of Civil Procedure (XIV. of 1882).

Number.	Proper Fee.
<p>Application for new trial.— An application for review of judgment such as is alluded to in Arts. 4 and 5, Sch. I., of the Court Fees Act VII. of 1870, does not include an application for a new trial in a Small Cause Court in the Mofussil.—<i>Gopee Nath Roy v. Ram Joy</i> (14 W. R. 249).</p> <p>Such an application is properly stamped with a one-anna stamp. See <i>Chotalal Jamnadas v. Bulakidas Jetha</i> (7 Bom. H.C., A.C., 109), under Sch. II., Art. 1, <i>post</i>.</p> <p>Interlocutory judgment.—Review.— See <i>S. J. De Sousa v. The Secretary of State</i></p>	<p><i>for India in Council</i> (P. J., 1892, p. 883), under Sch. II., Art. 1, <i>post</i>.</p> <p>Permission to make up deficiency in stamp.— Where an applicant for review is not informed at the time of his application that his petition is insufficiently stamped, he cannot at the time of hearing be refused permission to make up the proper value.—<i>In re Shahasada Fukeerooddeen Ahmed</i> (15 W. R. 278).</p> <p>See <i>Munro v. The Cawnpore Municipal Board</i> (12 All. 57), <i>ante</i>, p. 69.</p>

6. Copy or translation of a judgment or order not being, or having the force of, a decree—

When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—

(a) If the amount or value of the subject-matter is fifty or less than fifty rupees

Four annas.

(b) If such amount or value exceeds fifty rupees ...

Eight annas.

When such judgment or order is passed by a High Court...

One rupee.

Remissions of duty.—

See *I. G. Notn.*, No. 4650, 10th Sept. 1889, cls. (4), (9), (15), (21), (35), (42), and (44), Appendix C, *post*.

Reductions of duty.—

See the Notification above referred to, cls. (16 b), (28) and 38).

7. Copy of a decree or order having the force of a decree—

When such decree or order is made by any Civil Court other than a High Court or by any Revenue Court—

(a) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees

Eight annas.

(b) If such amount or value exceeds fifty rupees ...

One rupee.

When such decree or order is made by a High Court ...

Four rupees.

Notes of judgment.—

Notes of judgment furnished to parties under the rules of practice for the guidance of Small Cause Courts are copies of decrees, and require a stamp under Art. 7, Sch. I., of Act VII. of 1870.—*Pro.*, April 20, 1871 (6 Mad. H. C., Ap., 23).

Order having the force of a decree.—

An order rejecting a plaint, or directing

accounts to be taken, or determining any question mentioned in s. 244 of the Code of Civil Procedure, but not specified in s. 588 is a decree; an order specified in s. 588 is not a decree.—*The Code of Civil Procedure* (XIV. of 1882), s. 2.

Reductions and Remissions of duty.—

See notes under the preceding Article.

Number.	Proper Fee.
8. Copy of any document liable to stamp-duty under the "Indian stamp Act, 1899," when left by any party to a suit or proceeding in place of the original withdrawn—	
(a) When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
(b) In any other case	Eight annas.

Entries from day-books and ledger.—

In the course of a suit the plaintiff put in evidence certain entries from his day books and ledger. The books had been produced in Court and had been returned to the plaintiff as usual, on his furnishing copies of the said entries. The Subordinate Judge, feeling doubt as to whether such copies should be furnished on stamp paper, referred the question to the High Court. *Held*, that the original entries not having been in the handwriting of the debtor were not liable to stamp duty under Sch. I., Art. 1 of the Stamp

Act (I. of 1879), and that, therefore, the copies of them were not chargeable with any Court-fees under Sch. I., Art. 8 of the Court Fees Act VII. of 1870. That Article provided that copies of documents left by a party withdrawing the originals are chargeable with Court-fees only if the original withdrawn is itself liable to stamp-duty under the General Stamp Act.—*Harichand v. Jivna Subhana* (11 Bom. 526; s.c., P. J., 1887, p. 90).

Reductions and Remissions of duty.—

See notes under Art. 6, *ante*.

9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division—

For every three hundred and sixty words or fraction of three hundred and sixty words

Eight annas.

Method of counting folios.—

Several documents.—Where portions of *khatta*-books are translated, each portion translated is treated as a separate document, and any portion less than a folio is charged for under the Court Fees Act as a whole folio. The portions containing less than a folio are not to be taken together, and charged according to the whole number of folios they contain.—*Brajanath Dhar v. Bhabo Mohan Dhar* (6 B. L. R., Ap., 137).

Copies of baptismal, marriage and burial certificates.—Copies under the Births, Deaths and Marriages Registration Act.—Copies of Maps and Plans.—

The stamp-duty payable under Art. 22 of Sch. I., of the Indian Stamp Act, 1879,† on copies or extracts certified to be true copies of baptismal, marriage and burial certificates shall be denoted by means of *adhesive Court-fee labels*.—*I. G. Notn., No. 2036, 30th June 1882* (I. G., 1st July 1882, Pt. I., p. 257).

The stamp-duty under Sch. I., Art. 22 of the Indian Stamp Act, 1879,† on certified copies granted under the provisions of the Births, Deaths and Marriages Registration Act VI. of 1888 may be paid by means of

adhesive Court-fee labels.—*I. G. Notn., No. 6717, 21st Dec. 1888* (I. G., 22nd Dec. 1888, Pt. I., p. 584).—*Republished in B. G. Notn., No. 8647, 26th Dec. 1888* (B. G. G., 27th Dec. 1888, Pt. I., p. 1062).

It has been ruled by the Government of India that such adhesive Court-fee labels are to be cancelled by the officer issuing the certificate writing his name across the label.

The stamp-duty payable under Art. 22 of Sch. I. to the Indian Stamp Act, 1879,† on copies of maps or plans certified to be true copies shall be denoted by means of an eight anna *adhesive Court-fee stamp*.—*I. G. Notn., No. 4718, 22nd Oct. 1897* (B. G. Notn., No. 7388, 30th Oct. 1897; B. G. G., 4th Nov. 1897, Pt. I., p. 1833).

Application of the Article.—

Art. 8, Sch. I. of the Court Fees Act, applies only to a copy which is (1) a copy of a document liable to stamp-duty, under the General Stamp Act, and (2) which is left by a party to a suit or proceeding in place of the original withdrawn. It does not apply to copies of documents on plain paper which are not produced in *original* by reason of their being entries in books or such as would not become

* The words quoted have been substituted for the original words "General Stamp Act, 1899." See the General Clauses Act (X. of 1897), s. 8.

† See now Act II. of 1899, Sch. I., Art. 24.

Number.	Proper Fee.
<p>void or useless by force of the decree. The copies are not certified copies and,—the original documents not having been filed according to law,—cannot be said to have been left in place of the original documents withdrawn as contemplated by Art. 8 of Sch. I. of the Court Fees Act.—<i>B. G. Resolution, No. 1608, 27th Feb. 1886, R. D.</i></p>	<p>of Sch. I. of the Court Fees Act as they are neither Revenue nor Judicial orders, and no copies of mere orders from an office unless they come under the description of an "account, statement, report or the like," are liable to fees.—<i>B. G. Resolution, No. 1885, 9th March 1889, R. D.</i></p>
<p>The fee is not a copying fee.—</p> <p>Attention is drawn to the progressive rates of fees provided in Art. 9, viz., eight annas for every 360 words or fraction thereof. This is not a copying fee, as has sometimes been supposed, but a Court-fee. The Article corresponds to Art. 5, Sch. B., of the repealed Act XXVI. of 1867, which prescribed a similar duty <i>per sheet</i>; the only difference is that 360 words are now taken as equivalent to a sheet.—<i>Punj. Stamp Manual, 1888, p. 102, para. 148.</i></p>	<p><i>Sub-Registrar's reasons for refusing registration.</i>—The record of a Sub-Registrar's reasons for refusing to admit a document to registration is not a "revenue or judicial proceeding" within the meaning of Art. 9, Sch. I. of the Court Fees Act, and certified copies of such reasons are properly chargeable with stamp-duty under Art. 22, Sch. I., of the General Stamp Act (See now Act II. of 1899, Sch. I., Art. 24).—<i>B. G. Resolution, No. 2752, 12th April 1886, R. D.</i></p>
<p>Revenue or Judicial proceedings and orders.—</p> <p><i>Orders or proceedings under Bom. Act III. of 1874.</i>—A Court-fee is leviable under Art. 9 of Sch. I. of Act VII. of 1870 in respect of all orders or proceedings passed after investigation under Bom. Act III. of 1874. It may be doubted whether proceedings and orders under Bombay Hereditary Offices Act come within the meaning of the word "revenue" used in Art. 9 of Sch. I. of Act VII. of 1870. But if an investigation has been made, they would be covered by the word "judicial" in that Article (s. 71 of Bom. Act III. of 1874). Purely departmental or official orders in which there is no investigation or appeal, such as orders under s. 64 (c) and mere orders to register facts already recorded according to law or under the orders of Government (s. 76) are of course not within the meaning of Art. 9</p>	<p><i>Letters of administration.</i>—The Inspector-General of Registration's question turns upon whether letters of administration are a "judicial proceeding" within the meaning of Art. 9, Sch. I. of the Court Fees Act VII. of 1870, or not. In my opinion they are not, and therefore, copies of letters of administration are, I think, rightly charged with stamp-duty under Art. 22, Sch. I. of the General Stamp Act (1879), and not with a Court-fee.—<i>Memo. from the L. R., as recorded in B. G. Resolution, No. 8714, 10th Dec. 1886, R. D.</i></p>
	<p><i>Orders in lambardari, zaildari and patwari cases.</i>—Copies of orders in lambardari, zaildari, and patwari cases, and in executive proceedings of a similar nature, granted for purposes of appeal, should be stamped in accordance with Art. 9.—<i>Punj. Fin. Commr.'s Cir. No. 61, 1st Dec. 1885.</i></p>
	<p>Reductions and Remissions of duty.—</p> <p>See notes under Art. 6, <i>ante</i>.</p>

10.* [Repealed by the Guardians and Wards Act VIII. of 1890, s. 2 and Schedule.]

11.† Probate of a will or letters of administration with or without will annexed—

If the amount or value of the property in respect of which the grant of probate or letters of administration is made exceeds one thousand rupees.

Two per centum on such amount or value; provided that when, after the grant of a

certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII. of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

* Art. 10 ran thus:—"Certificate of administration granted under Act No. XL. of 1858 (for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal), or under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay).—If the amount or value of the property in respect of which such certificate is granted does not exceed five hundred rupees..... 5 rupees; if such amount or value exceeds five hundred rupees, but not one thousand rupees..... 10 rupees; and for every one thousand rupees, or part thereof, in excess of one thousand rupees..... 5 rupees." See I. G. Notn., No. 4650, 10th Sept. 1889, Appendix C, *post*.

† See foot-note on the next following page.

Number.	Proper Fee.
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Will.—

"Will" shall include a codicil and every writing making a voluntary posthumous disposition of property.—*The General Clauses Act (X. of 1897), s. 3 (57).*

Applicant denying that property belonged to the deceased.—

The Court-fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation, including property absolutely denied by the applicants to belong to the intestate's estate, until the contrary be proved.—*Nittyo Kali Debia v. Kader Nath Chatterjee (5 C. L. R. 868).*

Probate in cases not governed by the Indian Succession Act.—

In cases not governed by the Succession Act (X. of 1885), probates and letters of administration granted by the High Court of Bombay in respect of Hindus and Mahomedans, and other persons not usually designated as British subjects, take effect only, and can only be granted, for the purpose of recovering debts and securing debtors paying the same, except so far as is otherwise provided in Act XXVII. of 1860; and probate-duty is only payable on the amount of such debts.—*In re Haji Ismail (6 Bom. 452).*

Right declared by decree.—Application for letters of administration.—

A suit for a division of a joint estate having terminated in a settlement, the terms of which were embodied in a decree, the receivers who had been appointed *pendente lite* endorsed and transferred certain securities and shares to one of the parties pursuant to the decree. The Bank of Bengal, Account Department, and the companies concerned, having refused to recognise the transfer, D

applied for letters of administration in respect of the securities and shares in question, claiming exemption from the duty prescribed by the Court Fee Act, Sch. I., cl. 11, on the ground that she ought not to have been required to obtain such letters, her right having been declared by a decree of the High Court. *Held*, that the prescribed duty must be paid and that there was no ground for exemption from it.—*In the Goods of Sreenath Dass, Deceased (20 W. R. 440).*

Value exceeding Rs. 1,000.—Per centage.—

See notes under the next following Article. Also s. 19 (VIII), *ante*.

Deposit in a Government Savings Bank.—

Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee chargeable under the Court Fees Act, 1870, on the probate or letters of administration, or certificate (if any), granted in respect of his property.

Provided that the person claiming such probate or letters, or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the secretary of such Bank, and the Court shall receive it as evidence of the said amount.—*The Government Savings Banks Act (V. of 1873), s. 8.*

Duty payable only on property in British India.—

Probate-duty is payable only on assets which at the date of the testator's death are in British India.—*In re Eschiel Joshua Abraham (21 Bom. 189).*

12.* Certificate under the Succession Certificate Act, 1889—

In any case.

Two per centum on the amount or value of

any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any

* Arts. 11, 12 and 12A have been substituted for the original Articles 11 and 12, by the Succession Certificate Act (VII. of 1889), s. 18(1). The original Arts. 11 and 12 ran thus:—

"11. Probate of a will or letters of administration with or without will annexed.

12. Certificate granted under Act No. XXVII. of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons), or under Bombay Regulation VIII. of 1827 (to provide for the formal recognition of Heirs, Executors and Administrators, and for the appointment of Administrators and Managers of Property by Courts).

If the amount or value of the property in respect of which the probate or letters or certificate shall be granted exceeds one thousand rupees ...

Two per centum on such amount or value.

Note.—The person to whom any such certificate is granted, or his representative shall, after the expiration of twelve months from the date of such certificate and thereafter whenever the

Number.	Proper Fee.
	<p>debt or security to which the certificate is extended under section 10 of the Act.</p> <p>NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p>

Value exceeding Rs. 1,000.—

In cases in which the value of property, in respect of which a certificate of heirship is sought, exceeds Rs. 1,000, the stamp-duty should be calculated on the whole amount, and not on the excess over Rs. 1,000, under Act VII. of 1870, Sch. I., Art. 12; but the exceeding Rs. 1,000 is the condition of liability.—*Pro. Nov. 16, 1870* (5 Mad. H. C., Ap., 45).

Under Art. 12, as it originally stood, certificates of heirship were chargeable with duty only if the amount or value of the property in respect of which they were granted exceeded one thousand rupees. But under the new Article as substituted by Act VII. of 1889, there is no such exemption for such certificates and the duty is leviable in any case. See s. 19 (VIII), *ante*, with foot-note.

Deposit in a Government Savings Bank.—

See notes on the next preceding page.

Per centage.—

Under Act VII. of 1889, the Court-fee payable on a certificate is a true per centage, and should not be levied on even hundreds by counting fractions of hundreds as a hundred rupees.—*Alh. H. C. C. O., No. 9, 28th August 1890.*

Some diversity of practice appears to exist with regard to the method of calculating the proper fee leviable on succession certificates under Art. 12, Sch. I., of the Court Fees Act VII. of 1870, as amended by Act VII. of 1889. It has been ascertained by reference to the Financial Commissioner Punjab, and to the Government Advocate, that the fee should be levied at the prescribed rate of 2 per cent. calculated on the exact amount or value of any debts and securities specified in the certificate under s. 8 of the Act last-men-

tioned, and at the rate of 3 per cent. on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act. It is believed that in some districts the Article in question has been interpreted as meaning that for every Rs. 100 or part thereof, Rs. 2 or Rs. 3, as the case may be, are to be levied.—*Punj. Cir., No. 4, 30th March 1892, from the Supdt. of Stamps to all Deputy Commrs.*

Security.—

"Security" means (a) any promissory note debenture, stock, or other security of the Government of India, (b) any bond, debenture, or annuity charged by the Imperial Parliament on the revenues of India; (c) any stock or debenture of, or share in, a company or other incorporated institution; (d) any debenture or other security for money issued by, or on behalf of, a local authority; (e) any other security which the Governor-General in Council may, by notification in the Gazette of India, declare to be a security for the purposes of this Act.—*The Succession Certificate Act (VII. of 1889), s. 3 (2).*

Mode of collecting Court-fees on certificates.—

(1) Every application for a certificate or for the extension of a certificate must be accompanied by a deposit of a sum equal to the fee payable under the first Schedule to the Court Fees Act, 1870, in respect of the certificate or extension applied for. (2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid. (3) Any sum received under sub-section (1) and not expended under sub-section (2), shall be refunded to the person who deposited it.—*The Succession Certificate Act (VII. of 1889), s. 14.*

Court granting such certificate requires him to do so, file a statement on oath of all monies recovered or realised by him under such certificate. If the monies so recovered or realised exceed the amount of debts or other property as sworn by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this Schedule for such excess. In default of filing such statement within the time allowed the Court may cancel the certificate."

Number.	Proper Fee.
12 A.* Certificate under the Regulation of the Bombay Code No. VIII. of 1827.	(1) As regards debts and securities, the same
<p>fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and</p> <p>(2) As regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.</p>	
13.† Application to the Chief Court or the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure—	
<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees</p> <p>When such amount or value exceeds twenty-five rupees. ...</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal.</p>
<p>Refund of fee paid under this Article.—</p> <p>If the Court on application under s. 622 of the Civil Procedure Code, on which a fee has been paid under the last preceding section (i.e. s. 71 of Act XVIII. of 1884), sets aside or modifies the decree or order of a Subordinate Court, or remands the case for a fresh deci-</p>	<p>sion, it may grant to the applicant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the application, or any smaller amount which, with regard to the circumstances of the case, it may think proper to order to be refunded.—<i>The Punjab Courts Act (XVIII. of 1884), s. 72.</i></p>
14.‡ Application to the Court of the Recorder of Rangoon for the exercise of the revisional jurisdiction of a High Court over the Court of Small Causes of Rangoon under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887—	
<p>When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees</p> <p>When such amount or value exceeds twenty-five rupees ...</p>	<p>Two rupees.</p> <p>The fee leviable on a memorandum of appeal.</p>
<p>Refund of fee paid under this Article.—</p> <p>If the Recorder on an application under section 622 of the Code of Civil Procedure or section 25 of the Provincial Small Cause Courts Act, 1887, on which a fee has been paid under the Court Fees Act, 1870, as amended by the last foregoing section (i. e., s. 84 of Act XI. of 1889), sets aside or modifies</p>	<p>the decree or order of the Court of Small Causes, or remands the case for a fresh decision, he may grant to the applicant a certificate authorizing him to receive back from the Collector the full amount of the fee paid on the application, or any smaller amount which, with regard to the circumstances of the case, he may think proper to order to be refunded.—<i>The Lower Burma Courts Act (XI. of 1889), s. 85.</i></p>

* See foot-note, p. 81, ante.

† This Article has been added by the Punjab Courts Act (XVIII. of 1884), s. 71.

‡ This Article has been added by the Lower Burma Courts Act (XI. of 1889), s. 84.

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.
Rs.	Rs.	Rs. s. p.	Rs.	Rs.	Rs. s. p.
...	5	0 6 0	500	510	38 4 0
5	10	0 12 0	510	520	39 0 0
10	15	1 2 0	520	530	39 12 0
15	20	1 8 0	530	540	40 8 0
20	25	1 14 0	540	550	41 4 0
25	30	2 4 0	550	560	42 0 0
30	35	2 10 0	560	570	42 12 0
35	40	3 0 0	570	580	43 8 0
40	45	3 6 0	580	590	44 4 0
45	50	3 12 0	590	600	45 0 0
50	55	4 2 0	600	610	45 12 0
55	60	4 8 0	610	620	46 8 0
60	65	4 14 0	620	630	47 4 0
65	70	5 4 0	630	640	48 0 0
70	75	5 10 0	640	650	48 12 0
75	80	6 0 0	650	660	49 8 0
80	85	6 6 0	660	670	50 4 0
85	90	6 12 0	670	680	51 0 0
90	95	7 2 0	680	690	51 12 0
95	100	7 8 0	690	700	52 8 0
100	110	8 4 0	700	710	53 4 0
110	120	9 0 0	710	720	54 0 0
120	130	9 12 0	720	730	54 12 0
130	140	10 8 0	730	740	55 8 0
140	150	11 4 0	740	750	56 4 0
150	160	12 0 0	750	760	57 0 0
160	170	12 12 0	760	770	57 12 0
170	180	13 8 0	770	780	58 8 0
180	190	14 4 0	780	790	59 4 0
190	200	15 0 0	790	800	60 0 0
200	210	15 12 0	800	810	60 12 0
210	220	16 8 0	810	820	61 8 0
220	230	17 4 0	820	830	62 4 0
230	240	18 0 0	830	840	63 0 0
240	250	18 12 0	840	850	63 12 0
250	260	19 8 0	850	860	64 8 0
260	270	20 4 0	860	870	65 4 0
270	280	21 0 0	870	880	66 0 0
280	290	21 12 0	880	890	66 12 0
290	300	22 8 0	890	900	67 8 0
300	310	23 4 0	900	910	68 4 0
310	320	24 0 0	910	920	69 0 0
320	330	24 12 0	920	930	69 12 0
330	340	25 8 0	930	940	70 8 0
340	350	26 4 0	940	950	71 4 0
350	360	27 0 0	950	960	72 0 0
360	370	27 12 0	960	970	72 12 0
370	380	28 8 0	970	980	73 8 0
380	390	29 4 0	980	990	74 4 0
390	400	30 0 0	990	1,000	75 0 0
400	410	30 12 0	1,000	1,100	80 0 0
410	420	31 8 0	1,100	1,200	86 0 0
420	430	32 4 0	1,200	1,300	90 0 0
430	440	33 0 0	1,300	1,400	95 0 0
440	450	33 12 0	1,400	1,500	100 0 0
450	460	34 8 0	1,500	1,600	105 0 0
460	470	35 4 0	1,600	1,700	110 0 0
470	480	36 0 0	1,700	1,800	115 0 0
480	490	36 12 0	1,800	1,900	120 0 0
490	500	37 8 0	1,900	2,000	125 0 0

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.
Ra.	Ra.	Ra. a. p.	Ra.	Ra.	Ra. a. p.
2,000	2,100	180 0 0	16,500	17,000	685 0 0
2,100	2,200	185 0 0	17,000	17,500	700 0 0
2,200	2,300	140 0 0	17,500	18,000	715 0 0
2,300	2,400	145 0 0	18,000	18,500	730 0 0
2,400	2,500	150 0 0	18,500	19,000	745 0 0
2,500	2,600	155 0 0	19,000	19,500	760 0 0
2,600	2,700	160 0 0	19,500	20,000	775 0 0
2,700	2,800	165 0 0	20,000	21,000	795 0 0
2,800	2,900	170 0 0	21,000	22,000	815 0 0
2,900	3,000	175 0 0	22,000	23,000	835 0 0
3,000	3,100	180 0 0	23,000	24,000	855 0 0
3,100	3,200	185 0 0	24,000	25,000	875 0 0
3,200	3,300	190 0 0	25,000	26,000	895 0 0
3,300	3,400	195 0 0	26,000	27,000	915 0 0
3,400	3,500	200 0 0	27,000	28,000	935 0 0
3,500	3,600	205 0 0	28,000	29,000	955 0 0
3,600	3,700	210 0 0	29,000	30,000	975 0 0
3,700	3,800	215 0 0	30,000	32,000	995 0 0
3,800	3,900	220 0 0	32,000	34,000	1,015 0 0
3,900	4,000	225 0 0	34,000	36,000	1,035 0 0
4,000	4,100	230 0 0	36,000	38,000	1,055 0 0
4,100	4,200	235 0 0	38,000	40,000	1,075 0 0
4,200	4,300	240 0 0	40,000	42,000	1,095 0 0
4,300	4,400	245 0 0	42,000	44,000	1,115 0 0
4,400	4,500	250 0 0	44,000	46,000	1,135 0 0
4,500	4,600	255 0 0	46,000	48,000	1,155 0 0
4,600	4,700	260 0 0	48,000	50,000	1,175 0 0
4,700	4,800	265 0 0	50,000	55,000	1,200 0 0
4,800	4,900	270 0 0	55,000	60,000	1,225 0 0
4,900	5,000	275 0 0	60,000	65,000	1,250 0 0
5,000	5,250	285 0 0	65,000	70,000	1,275 0 0
5,250	5,500	295 0 0	70,000	75,000	1,300 0 0
5,500	5,750	305 0 0	75,000	80,000	1,325 0 0
5,750	6,000	315 0 0	80,000	85,000	1,350 0 0
6,000	6,250	325 0 0	85,000	90,000	1,375 0 0
6,250	6,500	335 0 0	90,000	95,000	1,400 0 0
6,500	6,750	345 0 0	95,000	1,00,000	1,425 0 0
6,750	7,000	355 0 0	1,00,000	1,05,000	1,450 0 0
7,000	7,250	365 0 0	1,05,000	1,10,000	1,475 0 0
7,250	7,500	375 0 0	1,10,000	1,15,000	1,500 0 0
7,500	7,750	385 0 0	1,15,000	1,20,000	1,525 0 0
7,750	8,000	395 0 0	1,20,000	1,25,000	1,550 0 0
8,000	8,250	405 0 0	1,25,000	1,30,000	1,575 0 0
8,250	8,500	415 0 0	1,30,000	1,35,000	1,600 0 0
8,500	8,750	425 0 0	1,35,000	1,40,000	1,625 0 0
8,750	9,000	435 0 0	1,40,000	1,45,000	1,650 0 0
9,000	9,250	445 0 0	1,45,000	1,50,000	1,675 0 0
9,250	9,500	455 0 0	1,50,000	1,55,000	1,700 0 0
9,500	9,750	465 0 0	1,55,000	1,60,000	1,725 0 0
9,750	10,000	475 0 0	1,60,000	1,65,000	1,750 0 0
10,000	10,500	490 0 0	1,65,000	1,70,000	1,775 0 0
10,500	11,000	505 0 0	1,70,000	1,75,000	1,800 0 0
11,000	11,500	520 0 0	1,75,000	1,80,000	1,825 0 0
11,500	12,000	535 0 0	1,80,000	1,85,000	1,850 0 0
12,000	12,500	550 0 0	1,85,000	1,90,000	1,875 0 0
12,500	13,000	565 0 0	1,90,000	1,95,000	1,900 0 0
13,000	13,500	580 0 0	1,95,000	2,00,000	1,925 0 0
13,500	14,000	595 0 0	2,00,000	2,05,000	1,950 0 0
14,000	14,500	610 0 0	2,05,000	2,10,000	1,975 0 0
14,500	15,000	625 0 0	2,10,000	2,15,000	2,000 0 0
15,000	15,500	640 0 0	2,15,000	2,20,000	2,025 0 0
15,500	16,000	655 0 0	2,20,000	2,25,000	2,050 0 0
16,000	16,500	670 0 0	2,25,000	2,30,000	2,075 0 0

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.
Ra.	Ra.	Ra. a. p.	Ra.	Ra.	Ra. a. p.
2,30,000	2,35,000	2,100 0 0	3,25,000	3,30,000	2,575 0 0
2,35,000	2,40,000	2,125 0 0	3,30,000	3,35,000	2,600 0 0
2,40,000	2,45,000	2,150 0 0	3,35,000	3,40,000	2,625 0 0
2,45,000	2,50,000	2,175 0 0	3,40,000	3,45,000	2,650 0 0
2,50,000	2,55,000	2,200 0 0	3,45,000	3,50,000	2,675 0 0
2,55,000	2,60,000	2,225 0 0	3,50,000	3,55,000	2,700 0 0
2,60,000	2,65,000	2,250 0 0	3,55,000	3,60,000	2,725 0 0
2,65,000	2,70,000	2,275 0 0	3,60,000	3,65,000	2,750 0 0
2,70,000	2,75,000	2,300 0 0	3,65,000	3,70,000	2,775 0 0
2,75,000	2,80,000	2,325 0 0	3,70,000	3,75,000	2,800 0 0
2,80,000	2,85,000	2,350 0 0	3,75,000	3,80,000	2,825 0 0
2,85,000	2,90,000	2,375 0 0	3,80,000	3,85,000	2,850 0 0
2,90,000	2,95,000	2,400 0 0	3,85,000	3,90,000	2,875 0 0
2,95,000	3,00,000	2,425 0 0	3,90,000	3,95,000	2,900 0 0
3,00,000	3,05,000	2,450 0 0	3,95,000	4,00,000	2,925 0 0
3,05,000	3,10,000	2,475 0 0	4,00,000	4,05,000	2,950 0 0
3,10,000	3,15,000	2,500 0 0	4,05,000	4,10,000	2,975 0 0
3,15,000	3,20,000	2,525 0 0	4,10,000	.....	3,000 0 0
3,20,000	3,25,000	2,550 0 0			

SCHEDULE II.

Fixed Fees.

Number.	Proper Fee.
1.* Application or petition—	
(a)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;	
or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	
or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	
or when presented to any Civil Court other than a principal Civil Court of original jurisdiction† or to any Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887,‡ or under the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, section 25,§ or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	One anna.
or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	
(b)—When containing a complaint or charge of any offence other than an offence for which Police-officers may, under the Code of Criminal Procedure, 1898,|| arrest without warrant, and presented to any Criminal Court;	
or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal to or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Eight annas.
or to deposit in Court revenue or rent;	
or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
(c)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act ...	One rupee.
(d)—When presented to a High Court	Two rupees.

* See *Telley v. Administrator-General of Bengal* (2 N.-W. P. 418), *ante*, p. 7.

† Here the words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859" are omitted, having been repealed by Act XIII. of 1889, s. 2 and Schedule.

‡ The reference to Act XI. of 1865 is altered in accordance with Act IX. of 1887, s. 2 (3).

§ The reference to Act XVI. of 1868, s. 20, is altered in accordance with Act XII. of 1887, s. 2 (3).

|| The reference to the old Code of 1882 is altered in accordance with s. 3 (1) of the new Code (V. of 1898).

Number.	Proper Fee.
<p>Clause (a).—</p> <p>Petition for new trial.—</p> <p>A petition for a new trial in a Small Cause Court is, under the Court Fees Act (VII. of 1870) properly stamped with a one-anna stamp.—<i>Chotalal Jamnadas v. Balakidas Jetha</i> (7 Bom. H. C., A. C., 109).</p> <p>Application to file an award.—</p> <p>The proper Court-fee upon an application to file and enforce an award under s. 525 of the Code of Civil Procedure is the Court-fee prescribed for application, and not the Court-fee upon a plaint, although the application is numbered and registered as a suit as provided by that section.—<i>Bijadthur Bhagut v. Monohur Bhagut</i> (10 Cal. 11); s. c., <i>Pilut Bhagut v. Monohur Bhagut</i> (13 O. L. R. 171).</p> <p>Application for winding up a partnership and for accounts.—</p> <p>See notes, <i>ante</i>, p. 28.</p> <p>Application by person holding a claim on property.—</p> <p>A person holding a claim on property ordered to be sold in execution of a decree, and applying while the inquiry under s. 287 of the Civil Procedure Code is going on, is required to make the application contemplated in the High Court's Civil Circular No. 90(c), p. 50 of the "Circular Orders." The application must be in writing, and bear the proper fee prescribed by Sch. II., No. 1 of the Court Fees Act (VII. of 1870).—<i>Lachmi-chand Hirachand v. Tukaram</i> (16 Bom. 700).</p> <p>Applications for licenses under the Indian Arms Act, 1878.—</p> <p>Applications for licenses under the Indian Arms Act XI. of 1878 in respect of which no fee is leviable, or regarding licenses on which the full fee has been paid, shall be considered to be applications within the meaning of Sch. II., Art. 1, cl. (a) of the Court Fees Act, 1870 and shall bear a Court-fee stamp of one anna.—<i>I. G. Notn.</i>, No. 1258, 11th July 1879.</p> <p>Municipal Commissioner.—Cantonment Committee.—</p> <p><i>Cantonment Committee.</i>—The third clause prescribes a fee of one anna on applications and petitions to Municipal Committees relating to conservancy or local improvements; and it has been ruled by the Financial Commissioner that inasmuch as a Cantonment Committee performs in a cantonment most of the functions that a Municipal Committee performs in a Municipality, in the absence of any provision to the contrary in the court Fees Act, a petition to a Cantonment Committee, or to its secretary (<i>i. e.</i>, the Cantonment Magistrate), is chargeable with a fee of one anna under this clause (<i>Punj. Fin. Commr.'s Letter</i>, No. 2262, 30th March</p>	<p>1880).—<i>Punj Stamp Manual</i>, 1888, p. 104, para. 151.</p> <p>All applications or petitions to a Municipal Committee should bear a Court-fee stamp of one anna under Art. I., Sch. II., of the Court Fees Act, VII. of 1870, except in the following cases where no stamp is required:—Application or petition (a) against taxes, (b) for refund of octoroi, (c) relating to conservancy fees.—<i>C. P. Cir.</i>, No. II., 16th Nov. 1896, from the <i>Supdt. of Stamps</i> to all <i>Deputy Commrs.</i></p> <p>See also s. 19, cl. XXI., <i>ante</i>.</p> <p>Application for a copy, &c., of any order.—</p> <p>The last clause of this sub-Article prescribes a fee of one anna on applications for copies of orders, but this does not include application for inspection of records, which may be on plain paper.—<i>Punj. Fin. Commr.'s Letter</i>, No. 2681, 14th April, 1882.</p> <p>Certificates of adjustment under s. 258 of the Civil Pro. Code.—</p> <p>Certificates of payment or adjustment under s. 258 of the Code of Civil Procedure require no Court-fee.—<i>All. H. C. Cir. Letter</i>, No. 6 of 1888.</p> <p>Inventory annexed to an application for attachment.—</p> <p>Inventory annexed to an application for attachment under the Code of Civil Procedure is not chargeable with a separate Court-fee.—<i>All. H. C. Cir. Letter</i>, No. 18 of 1881.</p> <p>Application for probate or letters of administration.—</p> <p>The stamp requisite for an application for a probate of a will, or letters of administration, is not required to be proportionate to the value of the property involved, as such applications come under the provisions made in Art. 1, Sch. II., Act VII. of 1870, for common applications and petitions.—<i>In the matter of Judoonath Sadhookhan</i> (15 W. R. 40).</p> <p>Applications not required by law to be in writing.—</p> <p>See notes, <i>ante</i>, p. 7.</p> <p>Optional, applications.—Application for return of document.—</p> <p>Stamp-duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons.—<i>Anonymous Case</i> (15 W. R. 287).</p> <p>See also <i>I. G. Notn.</i>, No. 4650, 10th Sept. 1889, cl. (17), Appendix C, <i>post</i>.</p> <p>To requests which need not be made as formal applications the first two paragraphs of High Court Circular 52 A of 19th Feb.</p>

Number.

Proper Fee.

1884 (published on p. 150 of the Government Gazette of that year) appear applicable. For convenience of reference they are transcribed below:—"As the law does not require any formal application to be made for the return of documents under s. 142 or s. 144 of the Code of Civil Procedure, they may be returned to the persons entitled to receive them on their oral request, and on taking their receipt in writing in the usual form. In case any such person chooses to make his request in writing, the paper, as this is optional, need bear no stamp.—*B. G. Resolution, No. 66, 5th Jan. 1888, R. D.*

No formal application seems necessary either for the adjournment of an Income Tax appeal, or to inform the Court that a compoundable offence (not being one under ss. 324, 335, 337 and 338, Indian Penal Code) has been compounded. In the case of offences under these four sections formal application to compound appears requisite.—*Ibid.*

Description of a document delivered to the Court.—

Held, that the description of a document delivered to the Court under s. 40 of the Code of Civil Procedure is neither a petition nor an application liable to duty within the meaning of the Stamp Act.—*Chotalal Amritlal v. Bombay, Baroda and Central India Railway Co.* (5 Bom. H.C., A.C., 101).

Application to the High Court for copies.—

Application to the High Court for certified copies of the decree and judgment may be engrossed on a stamp of one anna, under cl. 6, Art. 10, Sch. B, of Act XXVI. of 1867.—*In re Tiroj Biswas* (7 W. R. 455).

Reminders.—

The practice of affixing a one-anna Court-fee stamp to applications or petitions of the nature of reminders should be discontinued and in future the full stamp-duty authorized by law should be required thereon.—*B. G. Resolution, No. 6322, 13th Sept. 1882, R. D.*

Inamdar's Report.—

An Inamdar's report on attaching a defaulter's property under s. 90, Bombay Land Revenue Code, is not an application and does not require to be stamped.—*B. G. Resolution, No. 987, 11th June 1882, R. D.*

Notices to Municipalities.—

The notice required by s. 38 of the Bombay District Municipal Act is not an application or petition within the meaning of Sch. II., Art. 1 (a), paragraph 8 of the Court Fees Act, 1870, and is therefore not liable to payment of a Court-fee.—*B. G. Resolution, No. 4408, 19th June 1884, J. D.*

Affidavits.—Attestation by public officer.—

It is doubted whether it would be lawful for Government to direct that any particular class of officer administering the oath of a declarant of an affidavit should not certify that he has done so till a Court-fee label of one rupee is attached to the affidavit on account of his signature. *B. G. Resolution No. 2908, 12th June 1871*, does not in terms apply to affidavits, but it requires the payment of a fee by way of a charge for certain services rendered by public officers to private individuals over and above any official obligation imposed upon such officers by law. I am not aware of any law which imposes upon any Court or public officer the duty of attesting affidavits. If Government permit their officers to attest such documents, it is, I think, open to Government to require the convenience to the applicants and the loss of the public officers' time to be paid for. S. 197 of the Civil Procedure Code indicates what public functionaries may administer the oath of a declarant in the case of any affidavit under that Code, but it does not require any of the said functionaries, on application, to administer the oath to a declarant and attest his affidavit, and there is nothing in its provisions which appears to me to be inconsistent with the requirement of Government that a charge shall be paid for the attestation. The second para. of s. 196 of the Civil Procedure Code, on the other hand, recognizes that affidavits cannot be made without cost.—*Report by the Legal Remembrancer as recorded in B. G. Resolution, No. 429, 21st Jan. 1887, J. D.*

Affidavits are chargeable under Art. 3, Sch. I., of Act I. of 1879 with a stamp-duty of one rupee, except when made in the circumstances under which Art. 1 of Sch. II. of that Act declares them to be exempt. Affidavits are not chargeable with a Court-fee, not even those affidavits which by reason of their being made "for the immediate purpose of being filed or used in any Court or before the officer of any court" are exempt from stamp-duty. The reason for affidavits made for judicial purposes being exempt from Court-fee as well as stamp-duty is perhaps to be found in the fact that by s. 19, cl. XIV. of Act VII. of 1870, applications in respect of the production or filing of such affidavits are expressly rendered liable to a Court-fee.—*Report by the Legal Remembrancer as recorded in B. G. Resolution, No. 4974, 28th July 1887, J. D.*

Fees on affidavits distinguished from stamp-duty and Court-fee.—Government may legally require the payment of the prescribed fee in respect of affidavits sworn under s. 197 of the Civil Procedure Code and attested by the officers before whom they are sworn. The fees to be taken under the preceding resolution are not stamp-duties or Court-fees, but mere charges for the services which Government allows its servants to perform for the convenience of the public, though they are

Number.	Proper Fee.
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not bound by law to perform them. As the Resolutions are not based on the Court Fees Act, 1870, or Indian Stamp Act, 1879, they do not affect and are themselves unaffected by the provisions of s. 6 of the former Act, or s. 34 and Sch. II., Art. 1 of the latter Act. Therefore, on the one hand, the non-payment of a fee, chargeable under the above Resolutions on an affidavit could not affect its admissibility, and, on the other, the exemption of an affidavit from stamp-duty under the Stamp Act does not disentitle Government to charge a fee for the services of the officer who attests the affidavit, a service which he is not bound by any law to perform.—*Memo. by the Legal Remembrancer as recorded in B. G. Resolution, No. 858, 14th Feb. 1889, J. D.*

Clause (b).—

Complaint of illegal seizure and detention of cattle.—

See *Reg. v. Avji bin Naru* (8 Bom. H. C., Cr. Ca., 22), *ante* p. 72.

Complaint.—Remission of fee.—

Under sub-article (b) the stamp chargeable on petty criminal complaints is eight annas. The Court has no power to remit this fee if a stamped petition has been presented; but if no petition has been presented, and the complainant's statement is reduced to writing by the Court, the fee may either be taken or remitted under s. 18.—*Punj. Stamp Manual, 1888, p. 104, para. 162.*

Petition under the Minor's Act.—

A petition under the Minor's Act, No. IX. of 1861, falls under this sub-article, and requires a stamp of eight annas.—*Punj. Rec., No. 6 of 1878.*

Application by a lambardar.—

An application by a lambardar for a warrant against a revenue defaulter falls under this sub-article.—*Punj. Fin. Commr.'s Cir., No. 46, 1st Dec. 1884.*

Application to Collector for affixing impressed labels to instruments under Act I. of 1879 or II. of 1899.—

The law does not require that applications made to Collectors for affixing impressed labels to instruments under the Indian Stamp Act I. of 1879 should be stamped under cl. (b) of Art. 1, Sch. II. of the Court Fees Act VII. of 1870. These are made to the Collector in his capacity as Superintendent of Stamps for the District for a special purpose, and not as a Collector or Revenue Officer. Any application written on plain paper made to a Collector in the former capacity should be accepted.—*I. G. Letter, No. 2053, 9th May 1896.*

For applications for refund of the value of stamps spoiled or unfit for use, or no longer required for use, see *I. G. Notn., No. 4660, 10th Sept. 1889, cl. (1), Appendix C, post.*

Application for the assistance of the Collector in ejecting a ryot.—

See *Pyari Mohan Mookerji v. Kina Bawa* (2 B. L. R., A. C., 226; s. c., 11 W. R. 90), *ante*, p. 36.

Filing of razinamah for withdrawing a suit.—

After instituting a suit upon a bond for Rs. 82 with interest, the plaintiff filed a razinamah stating satisfaction of his claim and withdrawing the suit. *Held*, that the razinamah was rather of the nature of an application than of an agreement.—*Manick Chunder Roy v. Lallmon Sheikh* (8 W. R. 214).

A petition, stamped as an agreement, having been presented to a District Court by the parties to a suit informing the Court that they had entered into an agreement, whereby, *inter alia*, the defendant was bound to deliver to the plaintiff certain wood, and requesting that the suit might be removed from the file, the District Judge impounded it, levied a sum for insufficient stamp-duty and a penalty on the ground that it was a bond and forwarded it to the Collector. Upon a reference made by the Board of Revenue at the instance of the Collector, *held*, that the duty leviable was a Court-fee stamp under Art. 1 (b) of Sch. II. of the Court Fees Act 1870.—*Reference under Stamp Act, s. 46* (8 Mad. 15, F. B.).

Appeal under s. 108, cl. 2, of the Bengal Tenancy Act.—

See *Upadhya Thakur v. Persidh Singh* (23 Cal. 723, F. B.), *ante*, p. 43.

Written statements filed in Mamlatdars' Courts.—

The Mamlatdars Courts Act does not require defendants to file written statements, nor is it contemplated by that Act that a written statement should ever be put in. The Mamlatdar is apparently expected by examination of the defendant or his pleader, to ascertain what his defence is. But if in a rare case the Mamlatdar permits the defendant to file a written statement, there is nothing in the Court Fees Act that renders such a statement liable to a Court-fee. If it takes the form of an application or petition then under the second paragraph of cl. (b), Art. 1, of Sch. II. of the last named Act, it will be liable to a Court-fee of 8 annas.—*B. G. Resolution, No. 1267, 11th Feb. 1885, R. D.*

Interlocutory judgment.—Review.—

An application for review of an interlocutory judgment is governed by Art. 1, Sch. II. of the Court Fees Act and not by Arts. 4 and 5 of Sch. I. of the Act.—*S. J. De Sousa v. The Secretary of State for India in Council* (P. J., 1892, p. 383).

Number.	Proper Fee.
<p>Clause (d).—</p> <p>Decees under the Gujarat Talukdars Act.—</p> <p><i>Application for execution—Rejection.—Second appeal.</i>—See <i>Jamsang Devabhai v. Gogabhai Kikabhai</i> (16 Bom. 408), <i>ante</i>, p. 75.</p> <p>Appeal under s. 263 of the Succession Act.—</p> <p>The Court-fee payable on a memorandum of appeal presented to the High Court under s. 263 of the Succession Act from an order of the District Judge granting letters of administration is Rs. 2 under Act VII. of 1870, Sch. II., Art. 1 (d). Sch. II., Art. 17 is not</p>	<p>applicable to such a memorandum of appeal.—<i>Lee v. Hardy</i> (W. N., 1889, p. 27).</p> <p>Exemptions.—</p> <p>See s. 19 (IX.), (X.), (XI.), (XII.), (XIV.), (XVI.), (XVII.), (XVIII.), (XIX.), (XX.), (XXII.) and (XXIII.), <i>ante</i>.</p> <p>Remissions of duty.—</p> <p>See I. G. Notn., No. 4650, 10th Sept. 1889, cls. (1), (2), (8), (10), (11), (12), (13), (14), (17), (27), (43), (45) and (47), Appendix C, <i>post</i>.</p> <p>Reductions of duty.—</p> <p>See cls. (16a) and (37) of the Notification above referred to, Appendix C, <i>post</i>.</p>
2. Application for leave to sue as a pauper	Eight annas.
3. Application for leave to appeal as a pauper—	
(a)—When presented to a District Court	One rupee.
(b)—When presented to a Commissioner or a High Court ...	Two rupees.
4. Plaint or memorandum of Appeal in a suit to obtain possession under Act No. XVI. of 1888 or "the Mamlatdars' Courts Act, 1876" *	Eight annas.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy	Eight annas.
<p>Suit to eject a tenant-at-will.—</p> <p>See <i>Nurjahan v. Marfan Mundul</i> (11 C. L. R. 91), <i>ante</i>, p. 86.</p> <p>Suits to establish or disprove a right of</p>	<p>occupancy, falling under this Article should be distinguished from suits to contest a notice of ejectment, which are chargeable with an <i>ad valorem</i> fee under cl. XI. (d) of s. 7.—<i>Punjab Stamp Manual</i>, 1888, p. 74, para. 114.</p>
6.† Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure 1898,† or the Code of Civil Procedure	Eight annas.
<p>Bail-bonds.—</p> <p><i>Held</i>, by the Allahabad High Court, in <i>Kulwanta v. Mahabir Prasad</i> (11 All. 16, F. B.; s. c., W.N., 1888, p. 281), that where a bond is given under the orders of a Court as security by one party for the costs of another, it is subject to two duties—(a) an <i>ad valorem</i> stamp under the Stamp Act (I. of 1879), Sch. I., Art. 13, (b) a Court-fee of eight annas under the Court Fees Act (VII. of 1870), Sch. II., Art. 6.</p> <p>But it appears from the addition of the words "or by the Court Fees Act, 1870," to</p>	<p>Art. 13, Sch. I. of the Indian Stamp Act I. of 1879 by Act VI. of 1889, s. 18 (4), that bonds coming under the present Article will not now be liable to stamp-duty under Art. 13, Sch. I., of the Indian Stamp Act I. of 1879, corresponding to Art. 15, Sch. I. of the new Stamp Act II. of 1892.</p> <p>Remission of duty.—</p> <p>See I. G. Notn., No. 4650, 10th Sept. 1889, cl. (7), Appendix C, <i>post</i>.</p> <p>See s. 19 (XV.), <i>ante</i>.</p>

* The words quoted have been substituted for the original words "Bombay Act No. V. of 1864 (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law)," by Act XII. of 1891, second Schedule. See I. G. Notn., No. 4650, 10th Sept. 1889, cl. (25), Appendix C, *post*.

† Art. 6 has been substituted for the original Art. 6, by Act VI. of 1889, s. 18 (2). The original Article ran thus:—"6. Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authorityEight annas."

† The reference to the old Code of 1892 is altered in accordance with s. 3 (2) of the new Code (V. of 1898).

Number.	Proper Fee.
7. Undertaking under section 49 of the Indian Divorce Act ...	Eight annas.
The Indian Divorce Act.—	
<i>Suits by minors.</i> —When the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no	petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs. — <i>The Indian Divorce Act (IV. of 1869), s. 49.</i>
8.* [<i>Repealed by Act XII. of 1891, First Schedule.</i>]	
9.† [<i>Repealed by Act XII. of 1891, First Schedule.</i>]	
10. Mukhtarnama or Wakalatnama—	
When presented for the conduct of any one case—	
(a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this Number	Eight annas.
(b)—to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority	One rupee.
(c)—to a High Court, Chief Commissioner, Board of Revenue or other Chief Controlling Revenue or Executive Authority	Two rupees.

Power to receive moneys or documents.

If a pleader is authorized by the vakalatnama under which he acts to receive moneys or documents for his client in the course of the cause which he is empowered to conduct, or as a consequence of the decree or any order of the Court in such cause, a Court of Justice might legally and with propriety direct a public officer to pay money or make over valuable documents to the pleader. A general or special power of attorney to enable the pleader to receive such money or documents is not necessary.—*In the matter of Act XVIII. of 1869* (3 C. L. B. 18).

A vakalatnama authorizing a pleader to receive, during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit, or in consequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII. of 1869.—*Anonymous Case* (3 Cal. 767).

Document authorizing to appear and receive payment.—

A document was given to P by thirty-six persons jointly interested in a certain sum of

money authorizing him to appear before a certain officer and receive payment thereof. Held, that the document was a power-of-attorney, and that consequently the proper stamp-duty was one rupee, leviable under the Indian Stamp Act, 1879, Sch. I., Art. 50 (b).—*Reference under Stamp Act, s. 46* (9 Mad. 358, F. B.).

Power to obtain copies.—

A document authorizing a vakil to apply for copies of records from the Collector's office is properly stamped with a Court-fee stamp under Act 10 (a) of Sch. II. of the Court Fees Act, 1870, and does not require to be stamped as a power-of-attorney under Art. 50 (b) of Sch. I. of the Indian Stamp Act, 1879.—*Reference under Stamp Act, s. 46* (9 Mad. 146, F. B.).

Exemptions.—

See s. 19 (I.) and (XIII.), *ante*.

Remission of duty.—

See I. G. Notn., No. 4650, 10th Sept. 1869, cl. (80), Appendix C, *post*.

* Art. 8 ran thus:—"8. Petition of objection to assessment under the Indian Income Tax Act.....Eight annas."

† Art. 9 ran thus:—"9. Petition of appeal under the Indian Income Tax Act, section twenty-one.....One rupee."

Number.	Proper Fee.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint or from a decree or an order having the force of a decree, and is presented—	
(a)—to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority	Eight annas.
(b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority...	Two rupees.

Order having the force of a decree.—

Appeal from a decision under s. 322 B. of the Code of Civil Pro.—See *Srinivasa Ayyangar v. Peria. Tambi Nayakar* (4 Mad. 420), and *Ahmad Khan v. Madho Das* (7 All. 565), *ante*, p. 78.

See also *Narayan Raghunath v. Bhagwant Anant* (10 Bom. 238), and *Mahuban v. Umrao Begum; Shayama Sundari Dasi v. Robert Watson & Co.* (8 Cal. 720; 11 C. L. R. 98), *ante*, p. 75.

An appeal from an order remanding a case under s. 562 of the Code of Civil Procedure, not being a "decree" nor an "order having the force of a decree" falls under this Article.—*Punj. Rec.*, No. 6 of 1880.

Appeals from orders under s. 244 of the Civil Procedure Code.—

See I. G. Notn., No. 4650, 10th Sept. 1889, cl. (6), Appendix C, *post*.

Clause (a).—**Appeals against orders under Ch. X. of the Bengal Tenancy Act.—**

Art. 11 (a) of Sch. II. of the Court Fees Act VII. of 1870 prescribes that a fee of 8 annas shall be levied on each memorandum of appeal when the appeal is not from an order rejecting a plaint, or from a decree or an order having the force of a decree. It is now been brought to the notice of Government that in some Districts it has been the practice to levy under this Article a fee of 8 annas on appeals against the orders of settlement-officers in all proceedings under Ch. X. of the Bengal Tenancy Act. This practice is, I am to say, erroneous, the orders appealed against in all these cases having the force of decrees under s. 107 of that Act. As it is not possible to estimate at a money value the subject-matter of such appeals, a revenue officer being unable to pass anything except a declaratory decree, it seems to the Lieutenant Governor that a stamp-duty of Rs. 10, and not 8 annas, should be levied on them under Art. 17 (VI.) of Sch. II. of Act VII. of 1870. I am to request that this procedure may always be observed in future.—*From the Under Secretary to the Government of Bengal*

to the District Judges (Judicial, No. 836, F. D., dated the 28th Sept. 1891).

Rejection of claim under the Madras Forest Act.—Appeal.—

An appeal to the District Court from the rejection of a claim by a forest settlement-officer under cl. 2 of s. 10 of the Madras Forest Act, 1882, falls under Art. 17, cl. 6, and not under Art. 11 (a) of Sch. II. of the Court Fees Act 1870.—*Kamaraja v. Secretary of State for India* (8 Mad. 22).

Clause (b).—**Order directing an award to be filed.—Reversal by District Court.—Application to the High Court.—**

An application to the High Court to set aside an order of the District Court, reversing an order of a Court of first instance directing an award made without the intervention of a Court to be filed, should be treated as an application for a miscellaneous special appeal. Such an application may be made on a stamp of the value of two rupees under Sch. II., Art. 11. of the Court Fees Act (VII. of 1870). An appeal lies from an order directing an award made without the intervention of a Court of Justice to be filed in Court.—*Lakshman Shivaji v. Rama Easu* (8 Bom. H. C., A. C., 17).

Orders under ss. 58 and 214 of the Indian Companies Act.—

A memorandum of appeal from an order under s. 58 of Act VI. of 1882 presented to the High Court with a stamp of Rs. 2 is sufficiently stamped.—*Nawab of Bella Spinning and Weaving Co. Ltd. v. Almaram* (F. J., 1885, p. 214).

An order under s. 214 of Act VI. of 1882 (Indian Companies Act) is not a decree or an order having the force of a decree, and consequently an appeal from such an order to a High Court is properly stamped, with reference to Act VII. of 1870 (Court Fees Act), Sch. II., Art. 11 (b), with a Court-fee stamp of Rs. 2.—*Reference under s. 28 of Act VII. of 1870* (17 All. 238; s. c., W. N., 1895, p. 56).

Number.	Proper Fee.
12. Caveat.*	Five rupees.
13. Application under Act No. X of 1859,† section 26, or Bengal Act No. VI. of 1862,‡ section 9, or Bengal Act No. VIII. of 1869,§ section 37.	
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	
15. Plaint or memorandum of appeal in a suit to obtain possession of a wife.	

Valuation for jurisdiction.—

A suit for the restitution of conjugal rights is incapable of being valued, and no appeal therefore in such a suit will lie under the Burma Courts Act (XVII. of 1875), s. 49, from a decision of the Recorder of Rangoon.—*Golam Rahman v. Fatima Bibi* (18 Cal. 232).

A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purpose of jurisdiction. *Golam Rahman v. Fatima Bibi* (18 Cal. 232) followed. Held therefore that no appeal lay as of right to Her Majesty in Council in such a suit, although the suit had been valued at Rs. 25,000, and that valuation had been

relied on by the defendant, who had appealed to the High Court from the decision of the first Court which had gone against him.—*Mowla Newas v. Sajidunnissa Bibi* (18 Cal. 378).

Suits for the custody of children.— Suits under the Indian Divorce Act.—

This Article does not extend to a suit for custody of children, which would have to be stamped ten rupees under Art. 17 (VI.) as not being otherwise provided for. This paragraph does not refer to suits under the Indian Divorce Act which are separately provided for in Art. 20.—*Punj. Stamp Manual*, 1888, p. 106, para. 156.

16. || [Repealed by Act VI. of 1889, s. 18 (I).]

17. Plaint or memorandum of appeal in each of the following suits—

- i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:
- ii. to alter or cancel any entry in a register of the names of proprietors of revenue paying estates:
- iii. to obtain a declaratory decree where no consequential relief is prayed:
- iv. to set aside an award:
- v. to set aside an adoption:
- vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.

Ten rupees.

* Caveat is a process to stay the probate of a will, the issue of letters of administration, a license of marriage, &c.

† Act X. of 1859 was repealed in the Lower Provinces by Act VIII. of 1885 and Beng. Act I. of 1879; in the N.-W. P. by Act XVIII. of 1873; and in the Central Provinces by Act IX. of 1888.

‡ Beng. Act VI. of 1862 was repealed by Act VIII. of 1885 and Beng. Act I. of 1879.

§ Beng. Act VIII. of 1869 was repealed by Act VIII. of 1885.

|| Art. 16 ran thus:—"16. Administration-bond.....Eight rupees." Since the repeal of this Article, Administration-bonds are charged under the Indian Stamp Act I. of 1879, Sch. I., Art. 2, and Act II. of 1899, Sch. I., Art. 2.

Number.

Proper Fee.

Clause (I).—

Summary decision or order.—

See notes under the heading "Suits to set aside orders, attachments, &c.," *ante*, p. 23. Also notes under cl. III., of this Article.

Suit to establish right to attached property.—

When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree, but fails to establish it, and brings a suit under s. 283 of the Code of Civil Procedure (XIV. of 1882) to establish his right to the property attached, his plaint is to be treated as falling under Art. 17, cl. I. of Sch. II. of the Court Fees Act (VII. of 1870), and is chargeable with only a ten-rupee stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession.—*Dhondo Sakharam v. Govind Babaji* (9 Bom. 20).

A suit to establish a title prejudiced by an order in execution proceedings requires only a ten-rupee stamp, although praying that the plaintiff might be put in possession.—*Bhasker v. Shitaram* (P. J., 1887, p. 86).

Where on the removal of an attachment at the instance of a third party, the judgment-creditor brought a suit to establish the right of his judgment-debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside, *held* that the proper stamp on a plaint of that kind was rupees ten under s. 6 and Sch. II., Art. 17 (I.) of the Court Fees Act (VII. of 1870).—*Vithal Krishna v. Balkrishna Janardan* (10 Bom. 60, F. B.).

The plaintiff had attached certain immoveable property in execution of a decree against a third party. The attachment was removed on application by the defendant under s. 246 of Act VIII. of 1859 (Civil Procedure), whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor, and was liable to be attached and sold under his decree. The plaint, which did not state any amount as the value of the claim, bore a Rs. 10 stamp. The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim. *Held*, by the High Court, on appeal, that the plaint was properly stamped under Sch. II., Art. 17, cl. I., of Act VII. of 1870, as the suit was a suit to set aside a summary decision of a Civil Court not established by Letters Patent.—*Sadasiv Yeshwant v. Atmaram Sakharam* (4 Bom. 535).

Suits brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in s. 246 of the Civil Procedure Code may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed," so as to fall within s. 7, cl. IV., Art. (c) of the Court Fees Act (VII. of 1870), or as suits to obtain or set

aside a summary decision or order, in which case the stamp-duty payable would be that prescribed by Art. 17, cl. I., Sch. II., of the Court Fees Act. The Court Fees Act being a fiscal enactment, it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable for the suitor) and to impose fees accordingly. Decisions under s. 246 of Act VIII. of 1859 (Civil Procedure) as to the removal or retention of attachments, are "summary decisions or orders" within the meaning of Art. 17, cl. I., Sch. II., of the Court Fees Act (VII. of 1870). The words "summary decision or order" in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (e.g., Act X. of 1871, Sch. II., Art. 15, and Act XV. of 1877, Sch. II., Art. 18), affords no guide to their construction in the Court Fees Act.—*Dayachand v. Hemchand Dharamchand* (4 Bom. 515, F. B.).

For further particulars of this case see pp. 17 and 32, *ante*.

Followed in *Fatima Begam v. Sukh Ram* (6 All. 341).

Suits filed under the provisions of s. 355 of the Civil Procedure Code do not appear *ex nomine* provided for in the Stamp Act. Such suits are chargeable under Art. 17, cl. I., Sch. II.—*Bhanabhai v. Krishnalal* (P. J., 1896, p. 132).

Held that a suit for a declaration of the plaintiff's proprietary right to certain moveable property attached in execution of a decree while in possession of the plaintiff, and for the cancellation of the order of the Court executing the decree, made under s. 246 of Act VIII. of 1859 (Civil Procedure), disallowing his claim to the property, could be brought on a stamp of Rs. 20, and need not be valued according to the value of the property under attachment. *Chunia v. Ram Dial* (1 All. 360) followed. *Mufti Jalal-ud-din Mahomed v. Soherullah* (15 B. L. R., Ap. 1; s. c., 22 W. R. 422) dissented from. *Molichand Jaichand v. Dadabhai Pestanji* (11 Bom. H. C., A. O., 186) and *Chokalingapeshana Naicker v. Achiyar* (1 Mad. 40) distinguished.—*Gulsari Lall v. Jadaun Rai* (2 All. 63).

Followed in *Fatima Begam v. Sukh Ram* (6 All. 341).

The plaintiffs alleged in their plaint as follows: Certain property having been attached in execution of a decree, their mother, the wife of the judgment-debtor, objected to the attachment on the ground that the property had previously come into her possession under a transfer by sale in lieu of her dower-debt. The plaintiffs' mother died during the determination of the objection, having devised her property to the plaintiffs. They succeeded to the same, and certain other property, which also had been transferred to their mother

in lieu of her dower-debt, having been also attached in execution of the same decree, the plaintiffs objected to the attachment. The Court executing the decree passed orders disallowing both objections. Upon these allegations the plaintiffs claimed to set aside both orders. They paid, with reference to cl. I., Art. 17, Sch. II., of the Court Fees Act, 1870, a Court-fee of Rs. 20 on their plaint, but the Court of first instance held that this was not sufficient, and that the Court-fee should be calculated on the amount of the decree in execution of which the property had been attached. *Held*, that looking at the nature of the relief sought, cl. I., Art. 17, Sch. II. of the Court Fees Act, 1870, was applicable, and that a ten-rupee stamp in respect of each order sought to be set aside was payable. *Dryachand Nemchand v. Hemchand Dharamchand* (4 Bom. 515) and *Gulsari Lal v. Jadaun Rai* (2 All. 683) followed.—*Fatima Begam v. Sukh Ram* (6 All. 341; s. c., W. N., 1884, p. 113).

Followed in *Manraj Kuari v. Maharajah Radha Prasad Singh* (6 All. 466).

Certain immovable property having been attached in execution of two Rent Court decrees, the wife of the judgment-debtor, under s. 178 of the N.-W. P. Rent Act (XII. of 1881), objected to the attachment on the ground that the property had previously been conveyed to her by her husband under a deed of gift. The objection was disallowed, and she thereupon brought a suit with reference to the provisions of s. 181 (b) of the Rent Act (1) to establish her right to the property, (2) to set aside the order passed on her objection. *Held*, that looking at the nature of the reliefs sought, cls. (I.) and (III.), Art. 17, Sch. II. of the Court Fees Act, 1870, were applicable, and that plaintiff should pay a ten-rupee stamp on each of her claims. *Fatima Begam v. Sukh Ram* (6 All. 341) followed.—*Manraj Kuari v. Maharajah Radha Prasad Singh* (6 All. 466).

Held, that the Court-fee payable on the plaint and memorandum of appeal in a suit under s. 283 of the Civil Procedure Code, praying (a) for a declaration of right to certain property, and (b) that the said property might be realised from attachment in execution of a decree, was Rs. 10 in respect of each of the reliefs prayed.—*Dildar Fatima v. Naraindas* (11 All. 365; s. c., W. N., 1889, p. 181).

Decisions under s. 77 of the Registration Act.—The Court Fees payable on all appeals to the High Court arising out of suits brought under s. 77 of the Registration Act of 1877 is a fee of ten rupees, irrespective of the value of the suit.—*Jantoo v. Radha Canto Does* (8 Cal. 515).

Suit to contest an award.—A suit under Madras Act XXVIII. of 1860, s. 25, to contest the award of a settlement-officer, falls within the terms of Art. 17 (I.), of Sch. II. of the

Court Fees Act.—*Annammalai Chetti v. Cloete* (4 Mad. 204).

Clause (III).—

Suits to set aside attachments, &c.—

See the above notes. Also p. 23, ante.

A suit by a person against whom an order has been made under s. 246 of Act VIII. of 1859 (Civil Procedure), disallowing his claim to attached property, need not be valued according to the value of the property, but can be brought on a stamp of Rs. 10, under Act VII. of 1870, Sch. II., Art. 17 (III).—*Chunia v. Ram Dial* (1 All. 360).

Followed in *Gulsari Lal v. Jadaun Rai* (2 All. 683).

Suit by claimant to attached property.—See *Moti Singh v. Kaunsilla* (16 All. 308, F. B.; s. c., W. N., 1894, p. 109), ante, p. 54.

Consequential relief.—

Suits in which consequential relief is prayed, fall under s. 7 cl. IV. (c) of this Act, and are liable to *ad valorem* duty. See notes, ante, pp. 23-7.

Declaration of a right to redeem.—The plaintiff recognized the validity of the mortgage for a term of 20 years of her deceased father's estate made in 1854, by her two brothers, nor did she dispute the sale in 1863, after the death of the brothers, of the estate to the mortgagees by M, her mother, describing herself as sole owner, as a transfer of M's rights. She claimed to be declared to have a right to redeem from the mortgage of 1854, in due course of time, the share in the estate which devolved upon her by inheritance from her father and brother, the sale-deed of 1863 notwithstanding. The Court was of opinion that the suit was one for declaration of right only, and that the fee of Rs. 10 which was paid by her in respect of the memorandum of special appeal was the fee properly payable.—*Musummat Immaman v. Lalit Baksh* (7 N.-W. p. 343).

Suit to set aside auction-sale.—In a suit to set aside an auction-sale, the plaint must be stamped as if the suit were for the recovery of the property.—*Drapu Choudhry v. Ishaan Chunder Das* (9 O. L. R. 231).

Suit for declaration against alienations.—Where a suit was brought against the holder of an impartible palaiyapat and others, to whom portions of the estate had been alienated, by the son of the palaiyakar entitled to succeed to the estate on his father's demise, for a decree declaring that the alienations made by his father did not affect his rights, *held*, that the Court-fee leviable on the plaint was Rs. 10 under Art. 17 (3) of Sch. II. of the Court Fees Act, 1870, and not *ad valorem* fee calculated upon the amount for which the alienations had been made.—*Narayana v. Mutayam* (7 Mad. 184).

Number.

Proper Fee.

Suit for arrears of maintenance and declaration.—Decree for arrears.—*Appeal for declaration.*—See *Girijanund v. Sailajamund* (23 Cal. 645), *ante*, p. 51.

Suit for a declaration as to joint family property.—This was a suit for the following relief:—"That the property detailed below be declared to belong to the joint family and that it be declared established that the plaintiff holds possession of the said property in partnership with the defendants." The plaint was written on a 10-rupee stamped paper. *Held*, that the plaint was properly valued as for a suit for a declaratory decree.—*Siva Ram v. Nara'n Das* (W. N., 1884, p. 11).

Cancellation of a deed and order for maintenance.—In a suit for cancellation of a deed of sale and an order for maintenance it was held that a stamp of Rs. 20 was insufficient.—*Ram Peari v. Balgobind Das* (W. N., 1885, p. 294).

Declaration as to the liability of property.—*Appeal.*—In a suit on a mortgage bond a decree was passed for payment of principal and interest, and in default, for the sale of the mortgaged property. Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of Rs. 10 only. *Held*, that the proper stamp to be paid was not Rs. 10 as in the case of a declaratory decree, but on the value of the debt not exceeding the value of the property.—*Venkappa v. Narasimha* (10 Mad. 187).

Suit for account.—*Damages.*—See *Ram Dootal Singh v. Gopal Kristo Singh* (16 W. R. 156), *ante*, p. 23.

Suit for accounts.—*Declaration.*—See *Manohar Ganesh v. Bawa Ramcharan Das* (2 Bom. 219), *ante*, p. 26.

Suit for declaration of proprietary right.—See *Ostoché v. Hari Dass* (2 All. 869), *ante*, p. 27.

Suit for partition.—The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a Court-fee stamp of Rs. 10. The defendants admitted that three of the properties were ancestral and joint, but as to the other items the second defendant stated that they were the self acquired property of her deceased husband, and contended that the plaint was insufficiently stamped, as the object of the suit was to obtain a declaration of title to, and possession of, properties, in which the plaintiff had no interest. The Subordinate Judge allowed the objection and rejected the plaint. On appeal, *held*, by Petheram, C. J., and Norris, J., that the plaint was sufficiently stamped. The only relief prayed for was partition, and for the purposes of the stamp, the cause of action which is stated in the plaint, and that only, must be looked at.—*Mohendro Chandra Ganguli v. Ashutosh Ganguli* (20 Cal. 762, F. R.).

For other cases on partition see, *ante*, p. 21.

Suit to set aside mortgage.—O's father mortgaged certain land to B. A purchased the instrument of mortgage, and sued O, whose father had died, upon it, and obtained a decree enforcing the mortgage. O then mortgaged a moiety of the land to B, and subsequently sold the same moiety to A. A sued B for the cancellation of the instrument of mortgage to B. *Held*, that the suit was in the nature of a simple declaratory suit under s. 39, Specific Relief Act, and did not fall under s. 7, para. IV., cl. (c), Court Fees Act.—*Karam Khan v. Daryai Singh* (5 All. 831, F. B.; s. c., W. N., 1883, p. 56).

Suit for the cancellation of a mukhtarnama.—A suit for a declaratory decree by obtaining the cancellation of a mukhtarnama purporting to have been executed in favour of the defendant, is of the nature contemplated by s. 39 of the Specific Relief Act (I. of 1877) and falls within Art. 17 (iii) of Sch. II. of the Court Fees Act, and a Court-fee of Rs. 10 upon the plaint or memorandum of appeal in such suit is therefore sufficient. *Karam Khan v. Daryai Singh* (5 All. 831) referred to.—*Hira Lal v. Wali Bhagat* (W. N., 1889, p. 124).

For other suits for setting aside documents, see notes, *ante*, p. 25.

Suit for a declaration that property was joint and not liable to attachment.—The plaintiffs specified in their plaint as the reliefs sought by them—(1) that it be declared by the Court that the property mentioned at foot is joint ancestral property of the plaintiffs, and not liable to attachment and sale in execution of the decree of the defendant No. 4, dated 4th December 1888, against the defendant No. 1. (2) That the costs of the suit be also awarded by the decree. (3) That any other relief which the Court may think the plaintiffs entitled to may also be granted. *Held*, that the suit should be deemed a suit for one declaratory decree only, without consequential relief, and that consequently a Court-fee of Rs. 10 was sufficient.—*Gobind Nath Tiwari v. Gajraj Mali Taurayan* (13 All. 889; s. c., W. N., 1891, p. 139).

Suit by reversioners to declare alienations by a Hindu widow invalid.—See *Divachilaya Pillai v. Ponnathal* (18 Mad. 459), *ante*, p. 52.

Validity of adoption.—*Consequential relief.*—A suit to establish an adoption independently of any claim to property may be maintained, but the plaintiff must show that he has a cause of action and a right to consequential relief, though he may not ask for it. Court-fee on such a suit is Rs. 10.—*Baji v. Raghunath* (P. J., 1876, p. 142).

See *Kalova kom Bhujangrao v. Padapa valad Bhujangrao* (1 Bom. 248), under cl. V., *post*.

Suit for declaration of title only.—Where the plaintiff asks only for a declaration of title although the result of the suit may be

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<p>that the plaintiff if successful may recover property in the hands of some one, <i>held</i>, that such a suit required only a stamp of Rs. 10.—<i>Rajaya v. Rajaya</i> (P. J., 1891, p. 38).</p>	<p>Suit to set aside adoption.—Consequential relief.—</p>
<p><i>Suit under s. 149 (8) of the Bengal Tenancy Act.</i>—A suit by a third person under cl. 3 of s. 149 of the Bengal Tenancy Act is not a title suit, and need not be stamped as such. <i>Per Tottenham, J.</i>—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.—<i>Jagadamba Devi v. Protap Ghose</i> (14 Cal. 537).</p>	<p>The Legislature has, in Act VII. of 1870, Sch. II., Art. 17, cl. V, and Act. IX. of 1871 (Limitation), Sch. II., Art. 129, recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property.—<i>Kalona kom Bhujangrav v. Padapa valad Bhujangrav</i> (1 Bom. 248).</p>
<p><i>Suit for possession and declaration of right.</i>—Where a suit is for recovery of possession (with meane-profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal, and requires a stamp of Rs. 10.—<i>Hurro Nath Bhuttacharjee v. R. Harvey</i> (25 W. R. 28).</p>	<p>See <i>Baji v. Raghunath</i> (P. J., 1876, p. 142), under cl. III., <i>ante</i>. Also <i>Bama Soonduree Dossee v. Soorjo Coomar Roy</i> (22 W. R. 388), <i>ante</i>, p. 28.</p>
<p><i>Appeal for a declaration that debt should be a charge on property.</i>—See <i>Doshi v. Malek</i> (P. J., 1894, p. 153), <i>ante</i>, p. 18.</p>	<p>Clause (vi).—</p>
<p><i>Suit to have a decree set aside.</i>—A suit in which the only prayer is to have a decree set aside as null and void is a suit for a declaratory decree without consequential relief; and Art. 17, cl. 3, and not s. 7, cl. 4, of the Court Fees Act VII. of 1870, is applicable to it.—<i>Brimant Sagajirao v. S. Smith</i> (20 Bom. 736).</p>	<p>Rejection of claim under the Madras Forest Act.—Appeal.—</p>
<p>Valuation for the purpose of jurisdiction.—</p>	<p>See <i>Kamaraja v. Secretary of State for India</i> (8 Mad. 22), <i>ante</i>, p. 93.</p>
<p><i>Per Muttusami Ayyar, J.</i>—For the purposes of jurisdiction the value of a suit for a merely declaratory decree must be taken to be what it would be if the suit were one for possession of the property regarding which the plaintiff seeks to have his title declared.—<i>Ganapati v. Chathu</i> (12 Mad. 223).</p>	<p>Suit for the removal of Karnavan.—</p>
<p>Clause (v).—</p>	<p>A suit for the removal of a karnavan of a Malabar tarwad, on the ground of misfeasance, is incapable of valuation, and falls under cl. VI., Art. 17, Sch. II. of the Court Fees Act, 1870.—<i>Govindan Nambiar v. Krishnan Nambiar</i> (4 Mad. 146).</p>
<p>Suit to set aside adoption.—Valuation for the purpose of jurisdiction.—</p>	<p>See also <i>N. C. Kunhi Raman v. N. C. Puttalathu Kunhunni Nambiar</i> (4 Mad 314), and <i>Krishnan v. Raman</i> (11 Mad. 266), under Appendix A, <i>post</i>.</p>
<p>For the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted if the adoption be declared invalid is the measure of the value of the subject-matter of the suit.—<i>Keshava Sanabhaga v. Lakshmi Narayana</i> (6 Mad. 192).</p>	<p>Suit for partition.—Appeal.—</p>
<p>Dissented from in <i>Shoo Deni Ram v. Tulshi Ram</i> (15 All. 378).</p>	<p>The stamp-fee payable on appeals to the High Court in suits by persons in possession asking for "partition, the separation of a share and for khas possession of that share after separation," is that leviable under Art. VI., cl. XVII., Sch. II. of the Court Fees Act.—<i>Kirty Churn Mitter v. Aunath Nath Deb</i> (8 Cal. 757; s. c., 11 C. L. R. 95).</p>
<p>The value for the purposes of jurisdiction of a suit to set aside an adoption is not the value of the property, which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. <i>Keshava Sanabhaga v. Lakshmi Narayana</i> (6 Mad. 192) dissented from.—<i>Shoo Deni Ram v. Tulshi Ram</i> (15 All. 378; s. c., W. N., 1898, p. 147).</p>	<p>Appeal under s. 108, cl. 3, of the Bengal Tenancy Act.—</p>
	<p>The Court-fee payable on a memorandum of appeal presented to the High Court under s. 108, cl. 3, of the Bengal Tenancy Act of 1885 is that prescribed by Art. 17, cl. VI. of Sch. II. of the Court Fees Act.—<i>Petu Ghorai v. Ram Khelawan Lal Bhukut</i> (18 Cal. 667).</p>
	<p>But see <i>Upadhya Thakur v. Presidh Singh</i> (23 Cal. 723, F. B.), <i>ante</i> p. 43.</p>
	<p>Suits for removal of trustees under the Religious Endowments Act XX. of 1863.—</p>
	<p>A and B being worshippers at a Hindu temple, obtained sanction under s. 18 of the Religious Endowments Act to sue for the removal of the managers of the temple on the ground of breach of trust and for damages. A and B sued to remove the managers, but</p>

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<p>claimed no damages in their plaint. <i>Held</i>, that as the suit instituted differed from the one for which sanction was given, the plaint was properly rejected. The appellant was not entitled as a matter of right to give the suit a character different from that in respect of which sanction was granted. The contention that the plaint needs only a stamp of Rs. 10, even when damages are claimed could not be supported inasmuch as the compensation claimed would then form part of the subject-matter of the suit capable of being estimated at a money value within the meaning of the Court Fees Act.</p> <p>In a suit under Act XX. of 1863, s. 14 to remove the managers of an endowment from office on the ground that they had been guilty of misfeasance the subject-matter was held to be one which did not admit of valuation; and the Court-fee payable on its institution was the fixed fee of Rs. 10.—<i>Veerasami Pillay v. Chokappa Mucaliar</i> (11 Mad. 149, note).</p> <p>A prayer in a plaint purporting to be a plaint under s. 539 of the Code of Civil Procedure, that the plaintiffs themselves may be appointed trustees is not a prayer for possession requiring to be stamped at the value of the trust property, but is a prayer for a relief falling within Art. 17, cl. VI. of the second</p>	<p>Schedule to Act No. VII of 1870. <i>Sonachala v. Manika</i> (8 Mad. 516), <i>Delroos Banoo Begum v. Ashgar Ally Khan</i> (15 B. L. R. 167) and <i>Omrao Mirsa v. Jones</i> (10 Cal. 599) referred to and distinguished.—<i>Thakuri v. Bramha Narain</i> (19 All. 60; s. c., W. N., 1896, p. 187).</p> <p>See notes, <i>ante</i>, pp. 20 and 23.</p> <p>Appeals against orders under ch. X. of the Bengal Tenancy Act.—</p> <p>See notes, <i>ante</i>, p. 98.</p> <p>Suits under s. 77 of the Registration Act.—</p>
<p><i>See Jantoo v. Radha Canto Doss</i> (8 Cal. 515), <i>ante</i>, p. 96</p> <p>Suit for the cancellation of a condition.—</p> <p>A suit for Rs. 9,122 was brought by enforcement of a lien. The lower Court decreed the claim for Rs. 5,231, but annexed a condition that one of the properties be first proceeded with and in case of non-satisfaction the other. The plaintiff appealed for the balance and got the condition cancelled. <i>Held</i>, that he must pay <i>ad valorem</i> fee for the balance and Rs. 10 for the other relief.—<i>Ujagar Lal v. Mahan Kuar</i> (W. N., 1886, p. 812).</p>	
18. Application under section 523 of the Code of Civil Procedure.* | Ten rupees.	
<p>S. 523 of the Code of Civil Procedure relates to applications for filing in Court agreements to refer to arbitration any difference between the parties thereto.</p>	<p>Court refusing to file agreement.— Appeal.—</p> <p>See <i>Daya Nand v. Bakhtawar Singh</i> (5 All. 338, F. B.), <i>ante</i>, p. 75.</p>
19. Agreement under s. 527 of the same Code.† ... | Ten rupees.	
Remission of duty.— See I. G. Notn., No. 4650, 10th Sept. 1889, cl. (24), Appendix C, <i>post</i> .	
<p>20. Every petition under the Indian Divorce Act,† except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act ...</p>	<p>Twenty rupees.</p>
<p>Petitions under s. 44 of the Indian Divorce Act.—</p> <p>Under Art. 20, every petition under the Indian Divorce Act (except petitions under s. 44), and every memorandum of appeal under s. 55 requires a stamp of twenty rupees. The excepted s. 44 refers to applications for the custody, maintenance, and educations of minor children, the marriage of whose parents was the subject of a decree for dissolution of</p>	<p>marriage, or of a decree of nullity of marriage, or for placing such children under the protection of the Court; and petitions on such matters would require to be stamped under Art. 1 of Sch. II.—<i>The Punj. Stamp Manual</i>, 1888, p. 110, <i>para.</i> 159.</p> <p>S. 55 of the Indian Divorce Act relates to appeals from decrees and orders made by any Court in any suit or proceeding under that Act.</p>
<p>21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865 ...</p>	<p>Twenty rupees.</p>
For petitions under the Indian Christian Marriage Act, 1872, see s. 19 (XXIV.), <i>ante</i>.	

* † The references to ss. 326 and 328, respectively, of Act VIII. of 1859, have been altered in accordance with s. 3 of the new Code (XIV. of 1882). † Act IV. of 1869.

SCHEDULE III*.

(See section 19 I.)

*Form of Valuation (to be used with such Modifications,
if any, as may be necessary).*

IN THE COURT OF

Re Probate of the Will of
, deceased.

(or Administration of the Property and Credits of

I

{ solemnly affirm }
{ make oath }

and say that I am the executor (or one of the executors, or one of the next of kin) of
, deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items but inclusive of all rents, interest, dividends, and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED.

	Rs.	A.	P.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc. (State estimated value according to best of Executor's or Administrator's belief.)			
Property in Government securities transferable at the Public Debt Office. (State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Immoveable property, consisting of (State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value, and all rents that have accrued.)			
Leasehold property... .. If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth, and the value of such, inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)			
Property in public companies (State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)			

* This Schedule has been added by Act XI. of 1899, s. 3. For the original Schedule III which was repealed by Act XIV. of 1870, see p. 102, post.

ANNEXURE A.—Continued.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED.

	Rs.	A.	P.
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money. (State the amount of the whole; also the interest separately, calculating it to the time of making the application.)			
Book debts (Other than bad.)			
Stock in trade (State the estimated value, if any.)			
Other property not comprised under the foregoing heads ... (State the estimated value, if any.)			
TOTAL... ..			
Deduct amount shown in Annexure B not subject to duty ...			
NET TOTAL... ..			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate,			
Amount of funeral expenses			
Amount of mortgage-incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
TOTAL			

SCHEDULE III*.

*Enactments Repealed.—(See s. 2).**Part I.—Acts wholly repealed.*

Number and Year.	Title.
Act No. XVII. of 1848..	An Act for substituting stamp-duties instead of Institution-fees in Courts of the District Moonsiffs in the Presidency of Madras; and for refunding stamp-duties on plaints in certain cases.
Act No. X. of 1862.....	An Act to consolidate and amend the law relating to stamp-duties.
Act No. XI. of 1863.....	An Act to consolidate and amend the law relating to the employment and remuneration of peons for the service and execution of civil process.
Act No. XVIII. of 1865.	An Act to amend Act No. X. of 1862 (to consolidate and amend the law relating to stamp-duties).
Act No. XV. of 1868....	The High Court Fees Act, 1868.
Bengal Act No. V. of 1863.	An Act to amend the law relating to the employment and remuneration of peons for the service and execution of the process of the Civil and Revenue Courts.

Part II.—Acts and Regulations partly Repealed.

Number and Year.	Title.	Extent of Repeal.
Act No. V. of 1852	An Act for giving effect to the provisions of An Act of Parliament, passed in the fifteenth year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	In section 9 the words 'which may in all cases be on unstamped paper.' Section 25.
Act No. XXXIII. of 1852.	An Act to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same.	Section 9.
Act No. VIII. of 1859...	An Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	Section 98, from and including the words 'On the application,' to the end of the section. In section 118, the words 'On unstamped paper.' In section 119, the words 'and be written upon stamp-paper of the value prescribed for petitions to the Court where a stamp is required for petitions.' Section 123, from and including the words 'When such statement,' to the end of the section.

* This Schedule has been repealed by Act XIV. of 1870. It has been given here simply for reference.

Number and Year.	Title.	Extent of Repeal.
		<p>In section 164, the words 'on unstamped paper.'</p> <p>In section 299, the words 'on a stamp-paper of the value of eight annas.'</p> <p>In section 236, the words 'on a stamp-paper of one-fourth of the value prescribed for plaints in suits.'</p> <p>In section 327, the words 'shall be written on the stamp-paper required for petitions to the Court where a stamp is required for petitions by any law for the time being in force, and.'</p> <p>In section 238, the words 'which shall be subject to the same stamp-duty as prescribed for plaints in suits.'</p> <p>In section 368, the words 'on a stamp-paper of the value of one rupee if the appeal lie to the District Court, and on a stamp-paper of the value of two rupees if the appeal lie to the Sudder Court.'</p> <p>In section 377, from and including the words 'If the application, to the end of the section.'</p>
Act No. X. of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William.	<p>In sections 13 and 120, the words '(which may be on plain paper).'</p> <p>In section 19, the words 'on plain paper.'</p> <p>So much of sections 156 and 161 as relates to the stamp to be borne by a petition of appeal.</p>
Act No. XXIII. of 1861.	An Act to amend Act VIII. of 1859 (for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter).	The last clause of section 12.
Act No. XX. of 1862.....	An Act to provide for the levy of fees and stamp-duties in the High Court of Judicature at Fort William in Bengal and to suspend the operation of certain sections of Act VIII. of 1859 in the said High Court.	<p>The preamble down to and including the words 'appointed to the said High Court; and.'</p> <p>Section 2.</p>
Act No. I. of 1863.	An Act to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Birmah, and to provide for the extension of certain Acts to the said Territory.	<p>In section 17, the last sentence.</p> <p>In section 20, the words 'shall be written on stamp-paper of the value of one rupee if the appeal lie to the Court of the Deputy Commissioner, and on stamp-paper of the value of two rupees if the appeal lie to the Court of the Commissioner or to the Court of the Chief Commissioner, and.'</p> <p>Section 26.</p>

Number and Year.	Title.	Extent of Repeal.
Act No. XX. of 1863....	An Act to enable the Government to divest itself of the management of religious endowments.	In section 18, the words 'the application may be made upon unstamped paper' and 'In calculating the costs at the termination of the suit, the stamp-duty on the preliminary application shall be estimated, and shall be added to the costs of the suit.'
Act No. XXI. of 1863...	An Act to constitute Recorders' Courts for the towns of Akyab, Rangoon, and Moulmein in British Burmah; and to establish Courts of Small Causes in the said towns.	Section 46.
Act No. XXXII. of 1863	An Act to continue in force Act XX. of 1862 (to provide for the levy of fees and stamp-duties in the High Court of Judicature at Fort William in Bengal, and to suspend the operation of certain sections of Act VIII. of 1859 in the said High Court).	So far as it relates to fees and stamp-duties.
Act No. X. of 1865	The Indian Succession Act, 1865.	Section 329 and the Schedule.
Act No. XI. of 1865.....	An Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature.	In section 47, the words 'The twenty-sixth section of Act X. of 1862 (to consolidate and amend the law relating to stamp-duties), and.'
Act No. XV. of 1865.....	The Parsee Marriage and Divorce Act, 1865.	Section 39.
Act No. XX. of 1866 ..	The Indian Registration Act, 1866.	In section 53, the words 'shall, where a stamp is required by law, bear a stamp of one-fourth the value prescribed for a plaint in such a suit, and.' In section 84, the words 'shall, where a stamp is required by law, bear a stamp of eight annas, and.'
Act No. XXI. of 1866...	The Native Converts' Marriage Dissolution Act, 1866.	In section 7, the words 'shall bear a stamp of two rupees, and.'
Act No. XXVI. of 1867.	An Act to consolidate the law relating to stamp-duties.	The whole Act except the words 'No Advocate of any High Court shall be required to file or present a Mukhtarnama or Wakeelatnama or any other document empowering him to act.'
Act No. XIX. of 1868...	The Oudh Rent Act, 1868.	In section 15, the words 'the application shall bear a stamp of eight annas.' In section 25, the words 'on a paper bearing a stamp of eight annas.' In section 30, the words 'on a paper bearing a stamp of eight annas.'

Number and Year.	Title.	Extent of Repeal.
Act No. XXVIII. of 1868.	The Punjab Tenancy Act, 1868.	In sections 17 and 40, the words 'on a paper bearing a stamp of eight annas.' Section 48.
Act No. IV. of 1869.....	The Indian Divorce Act.	In section 47, the words 'or of reversal of judicial separation, or for restitution of conjugal rights or for damages, shall bear a stamp of five rupees, and,' and the words 'in the first, second and third cases mentioned in this section.' In section 49, the words 'shall bear a stamp of eight annas and.'
Act No. IX. of 1869.....	The Indian Income Tax Act.	In section 19, the words 'it shall bear a stamp of eight annas.' In section 21, the words 'shall be a stamp of one rupee, and.'
Bengal Regulation VI. of 1823.	A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the Indigo Plant, and for declaring certain principles in regard to the same.	Sections 7 and 8.
Bengal Act No. VI. of 1862.	An Act to amend Act X. of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.).	In section 5, the passage beginning with the words 'upon paper' and ending with 'deposit.' In section 18, the passage beginning with the words 'and be written.'
Bengal Act No. II. of 1869.	An Act to ascertain, regulate and record certain tenures in Chota Nagpore.	Section 22.
Bengal Act No. VIII. of 1869.	An Act to amend the procedure in suits between landlords and tenants.	In sections 14 and 76, the words '(which may be on plain paper).' In section 20, the words 'on plain paper.'
Madras Regulation III. of 1802.	A Regulation for receiving, trying and deciding suits on complaints declared cognizable in the Courts of Adawlut established in the several Zillas immediately subject to the Presidency of Fort St. George.	Section 21, from 'When' down to 'writing' (both inclusive).
Madras Regulation IV. of 1816.	A regulation for declaring the head inhabitants of villages to be Moonsiffs in their respective villages, to hear and decide civil suits for sums of money, or other personal property, to a limited amount, and for defining their jurisdiction.	So much of section 32, as relates to fees on the institution of suits tried by village Moonsiffs.

Number and Year.	Title.	Extent of Repeal.
Madras Regulation V. of 1816.	A Regulation for authorizing village Moonsiffs to assemble village Panchayat for the adjudication of civil suits for sums of money, or other personal property, without limitation as to amount or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such village Panchayats.	So much of sections 10 and 13 as relates to fees on the institution of suits tried by village Panchayats.
Madras Regulation VII. of 1816.	A Regulation for authorizing District Moonsiffs to assemble District Panchayats for the adjudication of civil suits for real and personal property, without limitation as to amount or value, within their respective jurisdictions, and for defining the powers and authority to be vested in such District Panchayats.	So much of section 10 as relates to fees on plaints and processes in suits before District Panchayats.
Madras Regulation XII. of 1816.	A Regulation for authorizing Collectors to refer claims regarding lands or crops, the validity of which claims may depend on the determination of a disputed boundary; as also certain disputes respecting the occupying, cultivating and irrigating of land, to be tried and determined by village and District Panchayats; and for prescribing the rules under which the trial of such disputes shall be conducted, and the decisions of the Panchayats carried into execution.	So much of section 11, as relates to fees on plaints before the Collector.
Madras Regulation XIV. of 1816.	A Regulation for amending and modifying the Rules which have been passed regarding the office of Vakil or Native Pleader in the Courts of Civil Jurisdiction.	Section 21, second clause.
Madras Regulation II. of 1825.	A Regulation for modifying and amending certain provisions contained in Regulation XIII. of 1816, Regulation II. of 1817, and Section VI., Regulation XXXIV. of 1802.	Section 5.
Madras Act No. VIII. 1865.	An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent.	Section 75.

Appendix A.

THE SUITS VALUATION ACT, NO. VII. OF 1887.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH FEBRUARY 1887.

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

Whereas it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; It is hereby enacted as follows :—

Title . 1. This Act may be called the Suits Valuation Act, 1887.

PART I.

SUITS RELATING TO LAND.

2. This part shall extend to such local areas, and come into force therein on such dates, as the Governor-General in Council, by notification in the *Gazette of India*, directs.†

Extent and commencement of Part I.

3. (1) The Local Government may with the previous sanction of the Governor-General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, 1870, section 7, paragraphs V. and VI., and paragraph X., clause (d).

Power for Local Government to make rules determining value of land for jurisdictional purposes.

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4. Where a suit mentioned in the Court Fees Act, 1870, section 7, paragraph IV., or Schedule II., Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction, the relief sought in the suit is valued, shall not exceed the value of the land or interest as determined by those rules.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

5. (1) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

Making and enforcement of rules.

* This Act has been extended to Upper Burma (except the Shan States) under s 5 of the Scheduled Districts Act, 1874.—*I. G.*, 11th Aug. 1888, Pt. I., p. 371.—*Burma Gazette*, 4th Aug. 1888, Pt. I., p. 362.

† Part I. has been declared to extend to the Punjab, and to come into force therein on the 1st day of March 1889.—*I. G.*, 23rd Feb. 1889, Pt. I., p. 107.

(2) Any rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, section 14* of that Act shall be repealed as regards that part of those territories.

Repeal of section 14 of the Madras Civil Courts Act, 1873.

PART II.

OTHER SUITS.

Extent and commencement of Part II.

7. This part extends to the whole of British India and shall come into force on the first day of July 1887.

8. Where in suits other than those referred to in the Court Fees Act, 1870, section 7, paragraphs V., VI., and IX., and paragraph X., clause (d), Court-fees are payable *ad valorem* under the Court Fees Act, 1870, the value as determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same.

Court-fee value and jurisdictional value to be the same in certain suits.

The provisions of s. 8 of Act VII. of 1887 apply to Appellate Courts as well as to the Courts of first instance, and the value of the subject-matter of suits for the purpose of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII. of 1887, the

plaintiff valued his claim at Rs. 664 for the computation of Court-fees, and at Rs. 14,000 for purposes of jurisdiction. *Held*, that the appeal from the decree of the Court of first instance lay to the District Court and not to the High Court.—*Bai Varunda Lakshmi v. Bai Manigverri* (18 Bom. 207).

9. When the subject-matter of suits of any class, other than suits mentioned in the Court Fees Act, 1870, section 7, paragraphs V. and VI. and paragraph X., clause (d), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

Determination of value of certain suits by High Court.

Repeal.

10. Section 32 of the Punjab Courts Act, 1884, is hereby repealed.

* S. 14 of the Madras Civil Courts Act runs thus:—"When the subject-matter of any suit or proceeding is land, a house, or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870, section 7, clause 5."

PART III.

SUPPLEMENTAL PROVISIONS.

11. (1) Notwithstanding anything in section 578 of the Code of

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes,

Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or Lower Appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect there-

to shall not be entertained by an Appellate Court unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were framed and recorded, or in the Lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or Lower Appellate Court.

(3) If the objection was taken in that manner, and the Appellate Court is satisfied as to both those matters, and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of British India and shall come into force on the first day of July 1887.

Proceedings pending at the commencement of Part I. or Part II.

12. Nothing in Part I. or Part II. shall be construed to affect the jurisdiction of any Court—

(a) with respect to any suit instituted before rules under Part I. applicable to the valuation of the suit take effect, or Part II. has come into force, as the case may be or

(b) with respect to any appeal arising out of any such suit.

The following cases on valuation for jurisdiction have been arranged in alphabetical order:—

Accounts, suits for.—

See notes, *ante*, pp. 28-9.

Partnership.—Suits by different partners for specific sums of money on adjustment of accounts.—After dissolution of certain partnership two separate suits were brought in 1889 by different partners for specific sums of money due to them, and in the alternative, for such other amounts as might be found due on an adjustment of accounts. The Munsif appointed an Amin who examined the accounts and ascertained the respective claims of the parties, and the plaintiffs in those suits obtained decrees on the basis of the Amin's adjustment of account. The present suit was brought in 1891 by certain other partners who were defendants in the suits of 1889, on the allegation that the partnership account had been already adjusted by the Amin appointed in the suits of 1889, and that the debts and dues of all parties had been determined by the Court. The plaintiffs prayed for recovery of the amount due to them under the Amin's adjustment, and, in the alternative, for such other relief as might be deemed proper by the Court to grant them against any of the defendants. *Held*, by Norris and Banerjee, JJ., (Rampini, J., dissenting), that under the provisions of s. 7. para. IV., cl. (f) of the Court Fees Act (VII. 1870), and s. 8 of the Suits Valuation Act (VII. of 1887), the suits were properly brought in the Munsif's Court, *Ladubhai Premchand v. Revichand Venichand* (6 Bom. 143) followed.—*Dhani Ram Shaha v. Bhagirath Shaha* (22 Cal. 692).

Adoption, suit to set aside.—

See notes, *ante*, p. 98.

Attached property, suit to establish right to.—

See notes, *ante*, p. 33.

Madras Civil Courts Act (III. of 1873).—*Suit to establish validity of charge upon property.*—For the purpose of jurisdiction (Madras Civil Courts Act, 1873) the subject-matter of a suit to establish the validity of a charge upon property is, when the property is in excess of the charge, the amount of the charge; when the charge is in excess of the property, the value of the property.—*Krishnama Chariar v. Srinivasa Ayyangar* (4 Mad. 339).

Followed in *Modhusudun Koer v. Rakhal Chunder Roy* (15 Cal. 104).

Suit to establish right to attached property.—*Held*, that in the case where a person has preferred a claim to property attached in execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property, the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree. Second Appeal No. 320 of 1876 (unreported, decided the 16th May

1876) followed.—*Gulsari Lal v. Jadaun Rai* (2 All. 799).

Followed in *Modhusudun Koer v. Rakhal Chunder Roy* (15 Cal. 104).

Distinguished in *Durga Prasad v. Bachla Kuar* (9 All. 140).

Bengal Civil Courts Act (VI. of 1871), s. 20.—*Civil Pro. Code 1882, s. 283.*—A Munsif has jurisdiction to try a suit brought under s. 283 of the Civil Procedure Code to test the question whether a property which has been attached in execution is liable to pay the claim of the creditor, the value of the property being over one thousand rupees, but the amount of the debt being less than that sum. In such suits the amount which is to settle the jurisdiction of the Court is the amount which is in dispute, and which the creditor would recover if successful, *viz.*, the amount due to him, and not the value of the property attached, unless the two amounts happen to be identical. *Janki Das v. Badri Nath* (2 All. 698), *Gulsari Lal v. Jadaun Rai* (2 All. 799), *Krishnama Chariar v. Srinivasa Ayyangar* (4 Mad. 339), and *Dayachand Nemchand v. Hemchand Dharamchand* (4 Bom. 515) followed.—*Modhusudun Koer v. Rakhal Chunder Roy* (15 Cal. 104).

Attachment of property, application for.—Appeal.—

Art III. of 1873, s. 13.—The plaintiff, being the holder of a decree of a Subordinate Court for more than Rs. 5,000, was obstructed in execution by the present defendants. He applied to the Court for the removal of the obstruction, the property which was the subject of the application being valued at less than Rs. 5,000, and the Subordinate Judge directed that the application be registered as a regular suit under the Civil Procedure Code, s. 331, and ultimately passed a decree in favour of the plaintiff. *Held*, that an appeal against this decree did not lie to the High Court.—*Kalima v. Nainan Kuthi* (13 Mad. 520).

Cancellation of deeds, &c., suit for.—

Cancellation of a bond.—Fraud.—Subject-matter in dispute.—**Bengal Civil Courts Act (VI. of 1871), s. 22.**—The plaintiffs sued for the cancellation of a bond for the payment of Rs. 6,000 together with interest thereon at the rate of four per cent. per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of Rs. 3,000 together with interest at the rate of one and a half per cent. per mensem, whereas the defendants had fraudulently caused them to execute the bond in suit. The plaintiffs paid into Court Rs. 3,000 together with interest at the rate of one and a half per cent. per mensem. *Held*, that the value of the subject-matter in dispute was the difference between Rs. 3,000 and Rs. 6,000 or thereabouts, and, therefore, an appeal from the decree of the Court of first instance pre-

ferred to the District Judge was cognizable by him.—*Kali Charan Rai v. Ajudhia Rai* (2 All. 148).

See also *Naraina Putter v. Aya Putter* (7 Mad. H. C. 372), *ante*, p. 25.

Cancellation of bond.—Interest.—Jurisdiction.—The value of the subject-matter of a suit for the cancellation of a bond is to be determined with reference only to the principal amount, and not that amount together with the interest payable thereon when the suit is instituted.—*Gulab Rai v. Mangli Lal* (6 All. 71).

Suit for possession and to set aside a kobala.—In a suit for possession of a share of an undivided estate and to set aside a kobala by which the estate had been illegally alienated, the plaintiff is not bound to value his claim according to the price stated in the kobala.—*Augopura Chowdhry v. Meah Bibes* (10 W. R. 207).

Damages, suits for.—

In determining the jurisdiction of the Court in a suit for damages, the amount claimed, and not that eventually found due, must be taken as the valuation.—*Joy Doorga Dassas v. Manick Chand Baboo* (16 W. R. 248).

Declaration, suit for.—

Suit to declare title to offices in a temple.—**Withdrawal of claim to some of the offices.**—In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. It was found that the fourth office carried with it the right to the other three. *Held*, that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit; but that even if they had done so, the value of all the four offices must be taken for the purposes of jurisdiction.—*Sundara v. Subba* (10 Mad. 371).

Declaration of membership of a tarwad.—**Valuation for jurisdiction.**—*Act III. of 1873, s. 12.*—The plaintiff, alleging that he was a karnavan of the defendant's tarwad, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief. It appeared that the tarwad property exceeded Rs. 25,000 in value, but that the proportionate share of each member, computed as on an equal division, was less than Rs. 900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif, and rejected the plaintiff. *Held*, that the order was wrong and should be set aside.—*Ibrayan Kunhi v. Komamutti Koya* (15 Mad. 501).

Suit for declaration of title to land.—Where a plaintiff only sues for declaration of his title to certain lands on reversal of the kobalas said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds.—*Sheo Gholam Singh v. Bejoyram Protap Singh* (W. R., S. N., 317).

See *Ganapathi v. Chathu* (12 Mad. 233), *ante*, p. 98.

Ejectment of tenant at fixed rates, suit for.—

See *Ram Raj Tewari v. Girnandan Bhagat* (15 All. 63; s. c., W. N., 1892, p. 240), *ante*, p. 29.

Joinder of causes of action.—Jurisdiction.—

Bengal Civil Courts Act VI. of 1871, s. 19.—Civil Procedure Code.—S. 6 of Act VIII. of 1859 (corresponding with s. 15 of Act X. of 1877, Civil Procedure) which provides that "every suit shall be instituted in the Court of the lowest grade competent to try it," does not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action are joined, the cumulative value of which is over Rs. 1,000; notwithstanding that if separate suits had been brought on these several causes such suits must have been instituted in the Court of the Munsif.—*Mashoolah Khan v. Ram Lall Agurwallah* (6 Cal. 6).

Jurisdiction how determined.—

Jurisdiction to be determined with reference to the statements contained in the plaint.—Questions of jurisdiction, whether with reference to the nature of the suit, or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence would govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation.—*Jag Lal v. Har Narayan Singh* (10 All. 524).

Valuation put by plaintiff in his plaint.—**Amount awarded by decree.**—The pecuniary jurisdiction of a civil Court on its original or appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint; and if a suit, having regard to the valuation in the plaint, is within the jurisdiction, such jurisdiction is not ousted by the Court finding that a decree for sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff. There is nothing in Act XII. of 1887 (Bengal, N. W. P. and Assam Civil Courts Act) to confine the sum for which a Civil Court may pass a decree to the limit of its jurisdiction to entertain a suit. *Mahabir Singh v. Behari Lal* (13 All. 320) referred to.—*Madho Das v. Ramji Patak* (16 All. 286).

Appeal.—Jurisdiction to be determined with reference to the value stated in the plaint.—*Act XII. of 1887, s. 21.*—For the purpose of determining the proper Appellate Court in a civil suit what is to be looked to is the value of the original suit—that is to say, the "amount or value of the subject-matter of the suit." Such "amount or value of the subject-matter of the suit" must be taken to be the value assigned by the plaintiff in his plaint, and

not the value as found by the Court, unless it appear that either purposely, or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint. An order of a District Judge returning a memorandum of appeal to be presented in the proper Court on the ground that the value of the suit is beyond the pecuniary limits of his jurisdiction is not a decree within the meaning of s. 3 of the Civil Procedure Code.—*Mahabir Singh v. Behari Lal* (13 All. 320).

Approved of in *Nilmony Singh v. Jagabandhu Roy* (23 Cal. 536).

Jurisdiction to be determined with reference to the claim as estimated by the plaintiff.—What *prima facie* determines the jurisdiction of a Court is the claim, or the subject-matter of the claim, as estimated by the plaintiff; and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so notwithstanding a *bona fide* error made by the plaintiff, but the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained, and which there is no reasonable ground for expecting to sustain.—*Lakshman Bhatkar v. Babaji Bhatkar* (8 Bom. 81).

Approved of in *Nilmony Singh v. Jagabandhu Roy* (23 Cal. 536).

Appeal. — Value of original suit. — Act XII. of 1887, s. 21.—Where the value of a suit was found by the lower Court to be less than Rs. 5,000, and the plaintiff contested that finding, and preferred his appeal to the High Court on the valuation of Rs. 7,500 made in his plaint, *held*, that the words “value of the original suit” in sub-section 1, s. 21 of the Bengal, N.-W. P. and Assam Civil Courts Act (XII. of 1887), did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that as it did not appear in the present case that the over-valuation was the result of any design to change the *venue* of appeal, the question whether “value” in the said section should be taken to be *bona fide* value need not be considered. *Lakshman Bhatkar v. Babaji Bhatkar* (8 Bom. 81) and *Mahabir Singh v. Behari Lal* (13 All. 320) *approved*.—*Nilmony Singh v. Jagabandhu Roy* (23 Cal. 536).

Punchmahals Laws Act, 1885. — Subordinate Judge. — Suit exceeding Rs. 5,000 in value. — Act VII. of 1887, s. 11.—The Subordinate Judge of Dahod had no jurisdiction to try a suit which commenced before May 1st 1885, and was still pending in the Court of the Munsif, Dahod, and the subject-matter of which exceeded in value Rs. 5,000, as Government directed under s. 3 of Act VII. of 1885 that such suits should be disposed of by the First Class Sub-Judge, Ahmedabad; and there was nothing in s. 11 of Act VII. of 1887 which cured this want of jurisdiction.—*Kasi Yasim v. Kasi Badrudin* (P. J., 1890, p. 187).

Act III. of 1873.—According to s. 12 of Act III. of 1873 (Madras Civil Courts Act), it is

the money-value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. *Held*, therefore, where the amount of the original suit was more than Rs. 5,000, and an appeal was preferred to the District Court, but the amount in dispute in the appeal did not exceed Rs. 5,000, that the District Court had no jurisdiction to hear the appeal.—*Muthusami Pillai v. Muthu Chidambara Chetti* (1 Mad. H. C. 856).

Suit to be valued according to its real character.—A suit should be valued according to its real character. Where a plaint is so worded as that, taken strictly, the valuation would be such that the Court in which the plaint was filed would have no jurisdiction, the mere miswording of the plaint will not oust the Court of its jurisdiction.—*Ajoodhia Lall v. Gumani Lall* (2 O. L. R. 184).

Appeal. — Jurisdiction to hear not governed by law in force at the date of suit, but of appeal.—The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which has led to it. For the purpose of jurisdiction a claim under s. 229 of Act VIII. of 1869 (Civil Procedure) is a fresh suit, and not a continuation of the suit in which the claim is made, so that, where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that deals with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim.—*Muttammal v. Chinna Gounden* (4 Mad. 220).

Karnavan, suit to remove.—

For the purpose of jurisdiction a suit to remove a *karnavan* of a Malabar *tarwad* is not a suit for the recovery of the *tarwad* properties managed by the *karnavan*, and to be valued as such, but a suit which asks for a relief that is incapable of valuation.—*N. G. Kunhi Raman v. N. C. Puttalathu Kunhuni Nambiar* (4 Mad. 814).

Valuation.—Although for the purposes of the Court Fees Act, a suit to remove the *karnavan* of a Malabar *tarwad* is incapable of valuation and subject to the fee prescribed by section 6, Art. 17 of Sch. II., of that Act, yet for the purposes of determining jurisdiction under s. 12 of the Civil Courts Act, the right of management, which is the subject-matter of the suit, must be valued. If the value is estimated *bonafide* by the plaintiff, the Court should adopt it.—*Krishna v. Raman* (11 Mad. 266).

Over-valuation or under-valuation.—

S. 578 of the Code of Civil Procedure (XIV. of 1882).—“No decree shall be reversed or substantially varied, nor shall any case be remanded in appeal, on account of any error, defect, or irregularity, whether in the decision or in any order passed in the suit, or other

wise, not affecting the merits of the case or the jurisdiction of the Court."

Bona fide over-valuation.—The mere fact that a suit has been over-valued does not deprive the Court in which it is brought of jurisdiction, if the over-valuation was *bona fide* and had not the effect of altering the appellate jurisdiction, that is to say, did not cause the appeal from the judgment of the Court of first instance to lie to a different Court from that to which it would have lain had the suit been instituted in a Court having a more limited jurisdiction.—*Rajendra Lall Gossami v. Shama Churn Lahori* (5 Cal. 188; s. c., 4 C. L. R. 417).

Over-valuation.—The valuation of a suit must be taken from the statement in the plaint, and if, after going into evidence, it is found that a particular item is improperly claimed, the Court has the means of punishing the plaintiff by saddling him with costs or in any other way; but the whole suit should not be dismissed simply because in the opinion of the lower Appellate Court, it ought to have been valued within the limit of the jurisdiction of the Small Cause Court.—*Mohee Lall v. Khetaram Marwary* (25 W. R. 76).

Designed over-valuation.—A suit was brought in the Munsif's Court for money as well as for damages valued at Rs. 1,004. The Munsif gave the plaintiff a decree for Rs. 900, but dismissed the claim for the balance, which was for damages. On appeal, the Subordinate Judge was of opinion that the claim had been designedly exaggerated, and he therefore held that the suit was one cognizable by the Small Cause Court, and directed that the plaint be returned to the plaintiff for the purpose of presenting it to the proper Court. *Held*, that as the suit was tried on its merits by the first Court, and the overvaluation of the suit was not found by the Appellate Court to have prejudicially affected the disposal of the suit on its merits, the objection as to jurisdiction should not have been given effect to, and therefore the Court below was wrong in directing the plaint to be returned.—*Hamidunnissa Bibi v. Gopal Chandra Malakar* (24 Cal. 661).

Error in valuation not affecting jurisdiction.—An error in the valuation of a claim is not an error, defect, or irregularity, which affects the merits of the case, and an Appellate Court is restrained by s. 350 of the Code of Civil Procedure (VIII. of 1859), from ordering the reversal of a decree on account of any such error, which does not also affect the jurisdiction of the Court which originally tried the suit. An error in a matter of stamp is no ground of appeal.—*Navsa bin Biba v. Baba bin Bahiru* (1 Bom. H. C., A. C., 163).—*Shoudammies Dosses v. Ram Boodro Gangooly* (8 W. R. 367).—*Mahomed Shaha v. Lall Mahomed* (15 W. R. 179).—*Subah Roy v. Baldeo Singh* (24 W. R. 225).—*Ramesur Dyal Singh v. Raj Kishore Singh* (13 W. R. 325).—*Param v. Achal* (4 All. 289).—*Kaladdin Guru Bakas v. Raghoji* (1 Bom. H. C., A. C., 62).—

Guddadhur Bannerjee v. Premomoyes Debia (10 W. R. 286).

See also *Wajid Ali Khan v. Lala Hanuman Prasad* (4 B. L. R., A. C., 139; s. c., 12 W. R. 484), *ante*, p. 47.

If a lower Appellate Court finds a suit to have been under-valued, when its proper value would have placed it beyond the jurisdiction of the Court of first instance where it was instituted, it should dismiss the case, and not remand it with a view to the deficient stamp-duty being made up.—*Augopura Chowdhry v. Meah Bibes* (10 W. R. 207).—*Mewa Lall v. Behares Lall* (14 W. R. 195).—*Shaikh Mushur Ali v. Mussamut Basoo* (8 W. R. 46).

See *Brojo Coomar Sen v. Ishan Chunder Das* (8 C. L. R. 79), *ante*, p. 46.

Section 350, Act VIII. of 1859 (Civil Procedure) did not prohibit a Court of appeal from modifying or reversing a decision of a lower Court on the ground of under-valuation of the suit, if the proper valuation would have taken it beyond the jurisdiction of the Court.—*Huree Pandey v. Bassoo* (11 W. R. 257).

See *Mt. Edoo v. Shaikh Hefaul Hossain* (5 B. L. R., Ap., 15; s. c., 13 W. R. 258), and *Shoo Gobind Rawut v. Abhai Narayan Sing* (5 B. L. R., Ap., 17), *ante*, p. 47.

In a suit in a Munsif's Court, it was found after issues had been fixed and some evidence recorded, that the claim had been under-valued, and that the proper valuation would carry it beyond the jurisdiction of the Munsif. The plaint was accordingly returned; and additional stamps having been filed, the case was tried by the Principal Sadr Amin. The Judge, on appeal, held that the plaint had been illegally returned by the Munsif, and that the act of the Principal Sadr Amin in proceeding to try the case was illegal. He accordingly dismissed the suit. *Held*, with reference to s. 350, Act VIII. of 1859 (Civil Procedure), that Judge was wrong in reversing the decree of the Principal Sadr Amin.—*Ram Gutty v. Geomo Monee Debia* (11 W. R. 177).

But the effect of s. 11 of the Suits Valuation Act (VII. of 1887) is that from the 1st day of July 1887, no objection as to want of jurisdiction by reason of over-valuation or under-valuation of a suit or appeal shall be entertained unless the objection was taken in the Court of first instance, and the Appellate Court is satisfied that the suit or appeal was over-valued or under-valued and that the over-valuation or under-valuation thereof had prejudicially affected the disposal of the suit or appeal on its merits the provisions of the Code of Civil Procedure (XIV. of 1882) s. 578 notwithstanding.

Under-valuation.—Merits.—Act VII. of 1887, s. 11.—Where the value of the subject-matter of a suit originally heard by a Deputy Collector was more than Rs. 5,000, but an appeal was preferred to and decided by the District Judge without any objection on the ground of under-valuation, *held*, with reference to s. 11 of Act VII. of 1887 that the High Court

in second appeal could not entertain any such objection.—*Kishen Lal v. Rup Chand* (W. N., 1889, p. 169).

See *Krishnasami v. Kanakasabai* (14 Mad. 183), in the next column.

Partition, suits for.—

See notes, *ante*, pp. 21-2.

Act XIV. of 1869, s. 25.—The subject-matter of a claim within the meaning of a. 26 of Act XIV. of 1869 (Bombay Civil Courts), is the specific thing sought by the plaintiff. In a partition suit where the plaintiff seeks for a division and separate possession of his share in joint property it is the *share* so claimed which is the subject-matter of the claim and not the *whole* of the joint property which is sought to be divided.—*Lakshman Bhatkar v. Babaji Bhatkar* (8 Bom. 81).

Act III. of 1878.—In suits for partition, the value of the *property* of which the plaintiff claims a share, and not the value of the *share* claimed, determines the jurisdiction of the Court under s. 12 of the Madras Civil Courts Act, 1878.—*Vydimatha v. Subramanya* (8 Mad. 235).

Suit for partition and mesne-profits.—*Act III. of 1878.*—N sued S and others for partition of a share of certain land, and claimed mesne-profits from other defendants who were tenants of the land. S obtained a decree by consent for her share, and a sum of Rs. 99 was decreed to her against the tenants for mesne-profits. Against this decree the tenants appealed. The Subordinate Judge, finding that the subject-matter of the suit, the *land* of which partition was claimed, exceeded the jurisdiction of the Munsif, reversed the decree of the Munsif, and directed the plaintiff to be returned for presentation in the proper Court. It was contended, on appeal to the High Court that the Subordinate Judge could not set aside the decree against the tenants for mesne-profits. *Held*, that as the Munsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for mesne-profits.—*Nagamma v. Subba* (11 Mad. 197).

See *Muthusami Muddaliar v. Nallakulantha Mudaliar* (18 Mad. 418).

Suit for partition.—*Appeal.*—*Objection as to jurisdiction.*—Plaintiff sued in the District Court for partition of a one-seventh share purchased by him in an undivided aghaharam, of which the total value was about Rs. 10,400, and obtained a decree. The defendants on appeal objected that the suit should have been filed in the District Munsif's Court. *Held*, that the suit should have been filed in the District Munsif's Court. *Vydimatha v. Subramanya* (8 Mad. 235) distinguished. *Per Curiam.*—Though the objection was not taken in the Court below, yet it is apparent on the face of the plaint, and has reference to the jurisdiction of the Court: we must therefore consider it.—*Ramaya v. Subarayudu* (13 Mad. 25).

Act III. of 1878.—*Suits Valuation Act, s. 11.*—The purchaser at a Court sale of eight pangus out of an estate of 28 ¹⁵/₁₆ pangus sold them to the plaintiff. The whole estate was worth more than Rs. 2,500, but the eight pangus sold to the plaintiff were worth less than that sum. The plaintiff brought this suit in a Subordinate Court against his vendor and certain persons who were in possession of, and claimed to be entitled by right of purchase to, the whole estate, for partition and possession of his eight pangus. It was found that the plaintiff was entitled to the eight pangus purchased by him as against the defendants. *Held*, (1) that the suit was within the pecuniary limits of the jurisdiction of the District Munsif; (2) that, since the disposal of the suit had not been prejudicially affected, the Suits Valuation Act, s. 11, was applicable, and the decree of the Subordinate Court should be confirmed. *Quare.*—Whether the Subordinate Court has not concurrent jurisdiction with a District Munsif in suits less than Rs. 2,500 in value.—*Krishnasami v. Kanakasabai* (14 Mad. 183).

Act III. of 1878.—In an appeal against a decree of a Subordinate Judge dismissing a suit brought by the members of one Nambudri illoom against the members of another for partition and delivery of a moiety of the property of an extinct illoom, it appeared that the value of the share claimed was less than Rs. 5,000. *Held*, that the appeal lay to the District Court. *Krishnasami v. Kanakasabai* (14 Mad. 183) followed.—*Narayanan v. Narayanan* (15 Mad. 69).

Act III. of 1878, s. 12.—*Suits Valuation Act, s. 8.*—Persons entitled to a share in certain lands of a village, only part of which was held in severalty, executed a mortgage of part of the lands due to their share. The mortgaged property was brought to sale in execution of a mortgage decree and was purchased by the present plaintiff. The plaintiff now sued for the apportionment and possession of the share to which he was entitled, and stated the value of the suit to be the value of the share claimed by him, viz., Rs. 1870, and not that of the entire property. The defendants were the mortgagors and other persons interested in the land, their respective shares not having been ascertained and demarcated. *Held*, that the suit was within the jurisdiction of a District Munsif.—*Chakrapani Asari v. Narasinga Rao* (19 Mad. 56).

Act VI. of 1871, s. 20.—In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family-property partitioned, the value of the plaintiff's share was found to be less than Rs. 1,000 and the value of the whole family-property exceeded Rs. 1,000. The lower Appellate Court decreed partition not only of the plaintiff's share, but also of the shares of the defendants *inter se*, though such partition was not asked for. *Held*, that the subject-matter in dispute in the suit, within the meaning of s. 20 of the Bengal Civil Courts

Act (VI. of 1871), was the share which the plaintiff asked to have partitioned; that it was immaterial that the share was, at the date of the suit, a portion of family property which exceed Rs. 1,000 in value; and that the Munsif, therefore, had jurisdiction to hear the suit. *Vydimatha v. Subramanya* (8 Mad. 235), *Kirty Churn Miller v. Aunath Nath Deb* (8 Cal. 757), *Shaikh Khoorshed Hossein v. Nubbee Fatima* (3 Cal. 551), and *Ramchandra Narayan v. Narayan Mahadev* (11 Bom. 216) distinguished. *Held*, also, that the lower Appellate Court had no jurisdiction to partition, as amongst the defendants, the residue of the property left after the partitioning off of the plaintiff's share.—*Hikmat Ali v. Wali-un-nissa* (13 All. 506).

Possession and mesne-profits, suit for.—

Act XII. of 1887, s. 21.—In a suit for possession and mesne-profits, the value of the original suit for the purposes of s. 21 of Act XII. of 1887 (Bengal, N.-W. P. and Assam Civil Courts), depends not merely upon the value of the property sought to be recovered, but also upon the value or amount of the profits recoverable.—*Mohini Mohan Das v. Satish Chandra Roy* (17 Cal. 704).

Possession, suit by a kanam-holder for.—

A suit brought by a kanam-holder against the jenni and the holders of a prior kanam in possession, to recover possession of the land may be properly treated, for the purpose of jurisdiction, as a suit for land, although it results in a decree for redemption, and, if regarded as a redemption-suit, would be cognisable by a Court of subordinate jurisdiction.—*Marakar v. Parameswaran* (6 Mad. 140).

Redemption of Mortgage.—

See notes, *ante*, p. 35.

Madras Civil Courts Act III. of 1873, Jurisdiction.—In a suit brought in a District Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of Rs. 206 on two parcels which be offered to redeem. As to the other parcels he alleged that if any charges had been created in defendant's favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif's jurisdiction. Defendant pleaded that he held a mortgage for Rs. 3,000 over the land, and therefore the Munsif's Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant's mortgage, and decreed possession to plaintiff on payment of Rs. 906 due on account of the mortgages and Rs. 1,647-11-9 on account of improvements. On appeal the District Judge held that the Munsif had no jurisdiction, reversed the decree, and ordered the plaintiff to be returned to be presented in the proper Court. *Held*, that the Munsif's Court had jurisdiction. If a suit is brought in ejectment, and the defendant proves that

he holds a mortgage, a decree for redemption cannot be made without his consent. If, in such a case, defendant consents to a decree for redemption, and the amount secured by the mortgage exceeds the limit of the pecuniary jurisdiction of the Court, the Court should not proceed further, but return the plaint to be presented in a superior Court.—*Chandu v. Kombi* (9 Mad. 208).

Registration, suit to enforce.—

Madras Civil Courts Act III. of 1873, ss. 12 14.—Court Fees Act VII. of 1870, s. 7, cl. 5.—Suit in the Court of a District Munsif to enforce registration of two instruments of gift. The property purporting to be conveyed was the same in each instrument, and its value was found to be less than Rs. 2,500, but the earlier instrument comprised also an assignment of the right to manage a charity. The later instrument was found to have been executed in supersession of the former, and the District Munsif passed a decree directing its registration alone. *Held*, that the District Munsif had jurisdiction to entertain the suit.—*Ramakrishnamma v. Bhagamma* (13 Mad. 56).

Restitution of conjugal rights, suit for.—

See notes, *ante*, p. 94.

Share of Inheritance, suit to recover.—

Madras Civil Courts Act III. of 1873, s. 12.—The plaintiff sought to be declared an heir to a deceased Mehomedan, and to recover her share of the inheritance, the share claimed being less than Rs. 2,500, while the value of the whole estate exceeded that amount. *Held*, that the suit was to be valued according to the share and not according to the value of the whole estate, and the suit therefore was within the jurisdiction of a District Munsif.—*Khansa Bibi v. Abba* (11 Mad. 140).

Madras Civil Courts Act III. of 1873, s. 13 (2).—Suit for distributive share.—Certain members of a Moplah family sued the others in a Subordinate Court to recover their distributive share under Mehomedan law. The property to be divided was more than Rs. 5,000 in value, but the share claimed by the plaintiffs was less. The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation in the High Court. *Held*, that the District Judge had jurisdiction to entertain the appeal.—*Kunhikutty v. Achotti* (14 Mad. 462).

Valuation.—

Preliminary question.—Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial.—*Joytara Dassie v. Mahomed Mobaruck* (8 Cal. 975; s. c., 11 C. L. R. 399).

Valuation cannot be increased in appeal.—Where a plaintiff in a suit under s. 93 of the

N.-W. P. Rent Act valued his suit at Rs. 46-8, which valuation was not objected to either by the defendant or the Court, and subsequently being defeated in his suit preferred an appeal which he valued at a very much greater amount, *held*, that he must be bound by the valuation put upon his suit and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint.—*Radha Prasad Singh v. Pattan Ojah* (W. N., 1893, p. 148).

A party to a suit having adopted a certain valuation cannot in the same suit object to that valuation.—*Kristo Indro Shaha v. Hurumonee Dassie* (L. R., 1 I. A. 184).

Under-valuation.—Appeal to Privy Council.—Where in a suit the stamp originally paid was on an amount very much less than Rs. 1,000, and the whole course of the litigation and the stamps had reference to this valuation, though the property was really of the value of Rs. 10,000, the Court refused an application for leave to appeal to the Privy Council.—*Lekhraj Roy v. Kanhya Singh* (18 W. R. 494).

Value of subject-matter indeterminate.—

See notes, *ante*, p. 98.

Appendix B.

GOVERNMENT NOTIFICATIONS, RULES AND RESOLUTIONS UNDER THE COURT FEES ACT.

PROCESS FEES.

RULES FRAMED BY THE HIGH COURT OF JUDICATURE AT BOMBAY UNDER SS. 20 AND 22.

B. G. Notn., No. 8987, 25th June, 1888.*

High Court Civil Circular No. 107†—The following rules framed by the Honourable the Chief Justice and Judges of the High Court under Sections 20 and 22 of the Court Fees Act, VII. of 1870, confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council, are published for general information :—

I.—High Court fees.—The fees at present levied for serving and executing processes issued by the High Court in its Appellate Jurisdiction shall continue to be levied.

II.—Civil Courts' fees.—The fees chargeable by all other Civil Courts shall be those shown in the appended table.

III.—Scale of remuneration to bailiffs, peons, &c.—The remuneration of bailiffs, peons and other persons employed by any Civil Court, other than the High Court, in the service and execution of processes shall be as follows :—

1st Class	Rs. 25	} per mensem.
2nd do.	...	...	...	...	...	" 20
3rd do.	...	...	...	...	...	" 15
4th do.	...	...	...	...	...	" 12
5th do.	...	...	...	...	...	" 9

Remuneration to European bailiffs.—When it is necessary to entertain a European bailiff the pay of such bailiff shall be Rs. 50.

IV.—Process-serving establishment to be classed.—The whole number of the process-serving establishment employed by the Civil Courts in each district shall be divided into five classes receiving the respective remuneration shown in the last rule.

V.—Qualifications for several classes.—Provided that no bailiff or peon shall be placed in the Third Class unless he is able to read and write well, nor in the Fourth Class unless he is able to read and write fairly.

VI.—Number of bailiffs to be employed in several districts.—In fixing the number of bailiffs and peons required to serve processes, District Judges shall consider that the average number of processes, which can be served during the year by each bailiff or peon, is as follows :—

In the District of :—

Surat	} 1,000
Ahmednagar	...	...	...	...	...	...
Satara	...	...	...	...	...	...
Thana	...	...	...	...	...	...
Nasik	...	...	...	...	...	...
Khandesh	...	...	...	...	...	...
Poona	...	...	...	...	...	...
Sholapur	...	...	...	...	...	...
Ahmedabad	700

* B. G. G., 1888, Pt. I., pp. 597 to 600 and p. 763.

† High Court Circular Order Book, pp. 70 to 77.

‡ Printed as amended—B. G. G., 1889, Pt. I., p. 871.

Ratnágiri	...	...	...	...	...	...	...	600
Bijápur	...	...	...	...	...	...	...
Dhárwár	...	...	...	...	...	...	...	500
Belgaum	...	...	...	...	...	...	...
Kánara	...	...	...	...	...	...	...	400

VII.—*Number of subordinates to be employed by Courts of Small Causes.*—In fixing the number of subordinates required to serve processes in any Court of Small Causes, District Judges shall consider that the average number of processes, which can be served by each bailiff or peon, is as follows:—

In the Small Cause Court of—

Surat	...	...	...	...	...	...	2,000
Broach	...	...	...	...	...	...
Poona	...	...	...	...	...	...	1,500
Ahmedabad	...	...	...	...	...	...
Nadiád	...	...	...	...	...	...	1,250

VIII.—*Employment of additional temporary bailiffs or peons.*—When the salary of any bailiffs or peons is paid by the party requiring their services (see the 5th exception below), additional temporary bailiffs or peons may be employed to a number not exceeding that of the men whose salary is thus paid. If no additional men are employed, the amount should be credited to Government.

IX.—*Fees for processes and proclamations.*—The following table contains the prescribed fees chargeable in Civil Courts in respect of Processes and Proclamations:—

Civil Courts* other than Mamlatdars' Courts.						Mamlatdars' Courts under Bombay Act III. of 1876.		
When the claim does not exceed Rs. 25.	Exceeding Rs. 25 but not exceeding Rs. 100.	Exceeding Rs. 100 but not exceeding Rs. 500.	Exceeding Rs. 500 but not exceeding Rs. 1,000.	Exceeding Rs. 1,000 but not exceeding Rs. 5,000.	Exceeding Rs. 5,000.	For every process or proclamation not otherwise provided for in this table.	For every notice or summons.	For every notice or summons returned unserved and re-issued for service.
Annas.	Annas.	Annas.	Rupees.	Rupees.	Rupees.	Annas.	Annas.	Annas.
2	4	8	1	2	4	8	3	2

Fees how to be charged.—The fees above prescribed are to be charged for every proclamation made, and in the case of other processes for each individual ordered to be served with a process. Where one individual is to be served in more than one capacity, e. g., personally and also as guardian of a minor or minors, only one fee is to be levied.

Exceptions.

1st.—*Re-issue of processes unserved.*—When a process issued by a Civil Court other than a Mamlatdar's Court is returned unserved, and has to be re-issued for service, a half fee only

* In suits in which the plaint is stamped with a stamp of Rs. 10 under Article 17 or of Rs. 5 under Article 15 of Schedule II. of the Court Fees Act, the process fees leviable will be eight and four annas respectively.

shall be charged on the occasion of each re-issue. When a notice or summons issued by a Mamlatdar's Court is returned unserved, and has to be re-issued for service, a fee of two annas only shall be charged on the occasion of each re-issue.

This rule applies whatever may be the reason which prevented service (e. g. whether the failure to serve was due to the fault of the party on whose behalf it was issued or not), and whether the identical paper is re-issued or a fresh paper.

2nd.—Issue of second process, on service being set aside, &c.—When the service is set aside in an inquiry under Section 82, Civil Procedure Code, or when witnesses, &c., have to be summoned a second time in consequence of the Court not sitting on the day for which they were first summoned, no further fee is to be levied upon re-issue.

3rd.—Double fees in certain cases.—The following processes shall be charged for at double the above rates:—

- (1) Warrant for the arrest of a defendant or a witness.
- (2) Injunction against waste, &c.
- (3) Injunction to restrain from repetition or continuance of breach of contract or wrongful act.
- (4) Order of attachment before judgment of the property of a defendant, or of an absconding witness.

Note.—If a warrant has already been issued to arrest a judgment-debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail, and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail.—*B. G. G., 1890, Pt. I., p. 1305.*

4th.—Process issued by Court without fee.—No fee shall be charged for any process issued by a Court of its own motion for the purpose of taking cognizance of any contempt of its authority.

5th.—Salary of bailiffs, &c., required from party.—(a) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.

(b) The time occupied in going to and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.

(c) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted.

6th.—Exemption of proclamations.—No process fee shall be charged on proclamations under Section 10 of Regulation VIII. of 1827.

Note.—Section 250 of the Civil Procedure Code has no application to cases in which attachment before judgment is ordered.

The double process fee provided by the High Court Civil Circular No. 107, exception 8, clause (4) is leviable in respect of the several orders of attachment for which forms are provided in Sch. IV., Nos. 160-5 of the Code.—*B. G. G., 1890, Pt. I., p. 1305.*

108. The following further rules made by the High Court under Section 20 of the Court Fees Act (VII. of 1870) have been confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council:—

1. *Fees for processes, &c., in suits under Act XVII. of 1879.*—The fees levied for all processes in suits to which Chapter II. of the Dekkhan Agriculturists' Relief Act (XVII. of 1879) applies, except suits of description mentioned in Section 3, Clauses (w) and (x), to which an agriculturist is not a party, shall be one-half the fees which would be leviable in similar suits, to which the said Act does not apply.

ii. No fees shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV. of the Dekkhan Agriculturists' Relief Act. XVII. of 1879.

iii. Nothing contained in these rules, nor in any rules heretofore made by the High Court under Section 20 of the Court Fees Act (VII. of 1870), shall apply to process issued by a Village Munsif under Chapter V. of the said Act (XVII. of 1879).

109. As to applications which must be made in writing, and upon which, therefore, a Court-fee is leviable see Circular No. 16, above.*

110.—*No Court-fee leviable on certificates of decree-holders under section 258, C. P. Code.*—No Court-fee is leviable upon a certificate of a decree-holder under Section 258 of the Civil Procedure Code, although such certificate declares that the judgment creditor has received a smaller sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

110 B.—Under Section 6 of the Court Fees Act a copy of a decree presented with an application for execution, in accordance with rule 72 at page 45 must, on its first presentation bear a Court-fee stamp.

If the same copy be presented again in the course of the same suit or proceeding or in the execution of the same decree, no fresh Court-fee is required in respect of such further presentation.—*B. G. G.*, 1890, Pt. I., p. 222.

111.—*Court-fees when to be paid and how.*—Before any process is issued in any Court, the proper officer of the Court should calculate the amount to be paid as Court-fees, and should give information of such amount to the person by whom the fees are payable. Such fees should be paid before the end of the fourth day after the day on which such information is given. The Court may, for sufficient reason, extend the time for payment.

The stamps received for Court-fees should be affixed to the application upon which the process is to be issued.

Process to be prepared after receipt of fees.—After the fees have been received but not before, the necessary summons, notice, warrant, or other process should be prepared.

Levy of fees to be endorsed on processes issued beyond jurisdiction.—When the process is to be issued beyond the jurisdiction of the Court, a note should be made on the process to the effect that the proper fee has been levied.

112.—*Processes issued by Courts in British territory to be served free of charge in Bombay Presidency.*—A process issued by any Court in British territory should be served free of charge by any Court (including the Court of Small Causes at Bombay) in the Bombay Presidency, if it be certified in the process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated.

113.†—*Processes of certain Courts in Native States to be served free of charge by Courts in Bombay Presidency.*—Processes issued by the Courts in Berar, Mysore, or in the territories of His Highness the Nizam or by any of the Courts mentioned in the Government of India's Notification No. 868-I of 13th March, 1881, republished at page 419 of the *Bombay Government Gazette* for 1885, Part I., or in subsequent notifications to which the provisions of Section 650A of the Code of Civil Procedure have been applied,‡ shall be served free of charge by the Courts in the Bombay Presidency.

* Circular No. 16 runs thus:—"Applications materially affecting the conduct of a suit or the legal position or rights of either party should be received only in writing. In matters of mere routine or indulgence and matters wholly within the discretion of the Judge, motions may be made orally."

† Printed as amended.—*B. G. G.*, 1889, Pt. I., p. 1077.

‡ *Kathiawar.*

1. Court of the Political Agent.
2. " Assistant Political Agent, Jhalavad Prant.
3. " Deputy Assistant Political Agent, Jhalavad Prant.
4. " Wadhwan Station Thandar.

114.—(i) *Processes to Straits Settlements. How to be addressed. Fee and postage to be remitted.*—Processes for service in the Straits Settlements should be forwarded to the Registrar of the Supreme Court at Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being made by a Post Office Money Order.

5. Court of the Wadhwan Station Officer (B. G. G., 1890, Pt. I., p. 1025).
6. " Chotila Thandar.
7. " Paliyad "
8. " Dasada "
9. " Bhōika "
10. " Vithalgad "
11. " Jhinjhuvada Kamdar.
12. " Assistant Political Agent, Sorath Prant.
13. " Deputy Assistant Political Agent, Sorath Prant.
14. " Bagasra Thandar.
15. " Lakhapadar "
16. " Assistant Political Agent, Halar Prant.
17. " Deputy Assistant Political Agent, Halar Prant.
18. " Lodhika Thandar.
19. " Dhrapha "
20. " Assistant Political Agent, Gohelvad Prant.
21. " Deputy Assistant Political Agent, Gohelvad Prant.
22. " Babra Thandar.
23. " Songad Station Thandar.
24. " Dattha Thandar.
25. " Chamardi "
26. " Chok "
27. " Judge of the Court of Small Causes, Rajkot.
28. " Deputy Thandar of Mulila.
29. " Thandar of Dedan.

Kolaba.

1. Court of the Sir Nyayadhish of Janjira.

Kolhapur and Southern Maratha Country.

1. Court of the Political Agent, Kolhapur and Southern Maratha Country.
2. " Assistant Political Agent, Kolhapur and Southern Maratha Country.
3. " Assistant Political Agent, Southern Maratha Country.
4. " Regent in Council, Kolhapur
5. " Chief Judge, Kolhapur
6. " " of Kagal
7. " " of Bavda
8. " Sadar Amin, Kolhapur
9. " Munsif of Sirhol
10. " " Gad Hinglaj
11. " Karbhari of Kagal
12. " " Bavda... ...
13. " Munsif of Inchalkaranji
14. " " Vishalgad
15. " Joint Officer of Katkol
16. " Nyayadhish of Miraj
17. " Munsif of Lakshmeshwar
18. " " Modnimb

} Kolhapur State.

} Miraj State (Senior).

(ii) *Particulars to be given in summonses to His Highness the Nizam's territories.*—In summonses sent for service on persons residing in the territories of His Highness the Nizam, the name of each person's place of residence, that is, the district, village and moholla (locality), should be given in full in the summons.—B. G. G., 1899, Pt. I., p. 1161.

In the case of summons to be served in the City of Hyderabad a period of five weeks should be fixed for return and in the case of summons to be served in the districts, a period of two months.—B. G. G., 1890, Pt. I., p. 125.

19. The Karbhari's Court	} Miraj State (Junior).
20. Court of the Munsif of Kavtha	...	...	...	...
21. " " Gudgiri	...	...	...	...
22. " " Karoli	} Ramdurg State.
23. The Karbhari's Appellate Court, Ramdurg	...	...	...	...
24. Court of the Nyayadhish of Ramdurg	...	...	...	...
25. " Vahivatdar of the Sub-Saranjam of Mhaisal.	Mhaisal State.
26. The Huzur Court	} Sangli State.
27. Court of the Nyayadish	...	...	...	...
28. " Munsif of Miraj Prant	...	...	...	...
29. " Munsif of Mangalvedha, Kuchi and Tardal	...	...	...	...
30. " Munsif of Shahapur and Shirhatti, or	...	...	...	...
31. " Chief of Mudhol.	...	...	...	...
32. " Nyayadhish of Mudhol.	

Rewa Kantha.

1. Court of the Political Agent.
2. " Assistant Political Agent.
3. " Joint Administrators of Rajpipla.
4. " Nyayadhish of Rajpipla.
5. " Munsif of Nandod.
6. " Munsif of Bhalod.
7. " Thandar of Sankhero Mewas,
8. " " Pandu Mewas.
9. " " Dorka Mewas.

Mahi Kantha.

1. Court of the Political Agent.
2. " Assistant Political Agent.
3. " Native Assistant to the Political Agent.
4. " Thandar in the Bavisi Zilla.
5. " " Katosan "
6. " " Sabar Kantha Zilla.
7. " " Gadwara "
8. " " Hadol.
9. " " Jher-Nirmali.
10. " Japtidar of Mohanpur.
11. " " Varsoda.
12. " " Pethapur.
13. " " Ghodasar.
14. " " Gabat.

Palanpur.

1. Court of the Political Superintendent.
2. " Senior Assistant Political Superintendent.
3. " Personal " " (B. G. G., 1890, Pt. I., p. 1025).
4. " Junior " " "

(iii) *Processes to Burma*.—Processes sent for service at any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place or in English.

RULES UNDER SECTIONS 20 AND 23.

The Government of India having approved of the following Rule made by the High Court, Bombay, under Section 20 of the Court Fees Act VII. of 1870, for the Revenue Courts in the Bombay Presidency proper, and sanctioned its acceptance as the Rule contemplated under Section 23 of that Act; it is hereby published for general information :—*

The fees chargeable by all Revenue Courts shall be—

- (1) for every Notice or Summons, 3 annas; and
- (2) for every Warrant of Arrest issued on application of parties, 6 annas.

Section 20 of the Court Fees Act, 1870, empowers the High Court to make rules for the fees of processes issued by Civil and Revenue Courts. Although the term "Revenue Court" appears to be falling into disuse, powers of a judicial nature, which under the Regulations of 1827 and subsequent years were exercised by officers considered to constitute such Courts, are still exercised by Revenue officers, and, as may be seen, the term is still retained in the Court Fees and perhaps a few other Acts of later years. There is no objection to the definition of the term as "any Revenue authority holding, as such, a judicial proceeding."

5. Court of the Thandar of the Tharad Jamya villages.
6. " " Vav.
7. " " Santalpur.
8. " " Varahi.
9. " " Diodar.
10. " " Kankrej Zilla.
11. " Japtidar of the estate of Malik Jorawarkhan Umar Khan of Varahi.

Savantvadi.

1. Court of the Political Superintendent.
2. " Chief Judge of Savantvadi. (B. G. G., 1897, Pt. I., p. 1895.)
3. " Nyayadhis of Savantvadi.
4. " Munsif of Kudal.
5. " Court of Small Causes at Vadi. (B. G. G., 1897, Pt. I., p. 1895.)

Sholapur (Akalkot).

1. Court of the Nyayadhis of Akalkot.
2. Subordinate Court of Polio.
3. " " Kurla.

Dharwar (Savanur).

1. Court of the Political Agent, Dharwar.

Surat.

1. Court of the Sachin State.

Satara.

1. Court of the Political Agent, Satara.
2. " Joint Administrators of Phaltan.

Khandesh.

1. Court of the Political Agent.
2. " Assistant Political Agent for Mewas States.
3. " " " " Dang and Surgana States.

* B. G. G., 1875, Pt. I., p. 637.

The Courts of Mamlatdars acting under Bombay Act III. of 1876 are Civil and not Revenue Courts, and an account of the work of these Courts should be embodied in the High Court's Report on the Administration of Justice, the Collectors furnishing the information in the form the High Court may prescribe.

The Revenue officers enumerated in the statement given below,* when acting under the provisions of the law therein quoted, should submit a report of their work to Government and not to the High Court.

The scale of fees prescribed by the High Court under section 20 of the Court Fees Act can be applied to processes issued by the officers above mentioned, unless such processes are issued by the officers *proprio motu*, or at the instance of other officers acting on behalf of Government, (G. R. 5855, J. D., of 5th and 6444 of 30th September 1881).

Note.—The above scale was originally intended to be applicable to the Mamlatdars' Courts constituted under Act III. of 1876, and should still be observed in those Courts. The scale of fees applicable to Courts constituted under the Bombay Civil Courts Act, 1869, is not to be observed in the Mamlatdars' Courts.

3. In formal and summary enquiries under the Land Revenue Code which it is desirable should not be dismissed through default of the parties in furnishing Court-fee or batta for witnesses, the Revenue authority holding the enquiry should accept the petition or complaint and summon the witnesses *proprio motu*. The procedure sanctioned in the Government of India Resolution 3025 of 31st December 1878, published at page 79, No. 121 of the present edition of the High Courts' Circular Orders, should be adopted in such cases as far as practicable. (G. R. 6737 of 11th November 1881, R. D.).

* Statement referred to :—

Designation of Revenue Authorities.	Act under which Revenue Officers hold Judicial Proceedings.
Commissioner, Assistant Commissioner or Deputy Commissioner of Customs.	Act XXIX. of 1857 (Land Customs).
Registrars	Act III. of 1877 (Registration Act).
Collectors	Act VI. of 1878 (Treasure Trove).
Forest Settlement Officers	Act VII. of 1878 (Forests.)
Commissioners, Assistant Commissioner or Deputy Commissioner of Customs.	Act VIII. of 1878 (Sea Customs).
Collectors	Act I. of 1879 (Stamps). (<i>Repealed by Act II. of 1899</i>).
Manager of the Sind Encumbered Estates.	Act XX. of 1881 (Sind Encumbered Estates).
The Talukdari Settlement Officer ...	Act XXI. of 1881 (Broach and Kaira Encumbered Estates).
Collectors	Act XIV. of 1882 (Civil Procedure Code).
The Talukdari Settlement Officer ...	Bombay Act VI. of 1862 (Ahmedabad Talukdars' Relief).
Collectors	Bombay Act II. of 1863 (Claims to exemption from payment of revenue).
Do.	Bombay Act VII. of 1863 (Summary Settlement of claims to exemption from payment of revenue).
Do.	Bombay Act III. of 1874 (Hereditary Offices).
The Collector of Bombay	Bombay Act II. 1876 (Land Revenue, Bombay City).
Collectors	Bombay Act III. of 1878 (License tax).
Do.	Bombay Act V. of 1878 (Abkari).
Commissioners, Survey Commissioners, Collectors, Superintendent of Survey, Survey Settlement Officers.	Bombay Act V. of 1879 (Bombay Land Revenue Code).
Canal Officers, Collectors, and Commissioners.	Bombay Act VII. of 1879 (Irrigation).
Commissioners	Factories Act of 1881.

4. Postage charges on all processes, notices and such other documents as are issued from any judicial or Revenue Court are to be defrayed by means of postage service stamps and not to be levied from the parties. (G. B. 2711, J. D., of 29th April 1882).

5. Circular No. 83, at pages 46 and 47 of the High Court's Civil Circulars as to the scale of fees to be levied in the partition of estate by the Collector having been cancelled, Collectors are left free to use their powers under the Bombay Land Revenue Code for the levy of the costs of the partition in execution of a Civil Court's decree of estates paying revenue to Government. (G. B. 1993, 14th April 1890, J. D.).

DESCRIPTION OF STAMPS.

SECTIONS 26 AND 35.

I. G. Notn., No. 861, dated the 18th April 1883, Fin. and Com. Dept. *

In exercise of the powers conferred by sections 26 and 35 of the Court Fees Act, 1870, and of all other powers enabling him in this behalf, and in supersession of Notification by the Government of India in the Financial Department, No. 1520, dated the 5th March 1875, and all other Notifications on the subject, the Governor-General in Council is pleased to issue the following directions:—

I.—When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps bearing the words "Court Fees," at present in use, or adhesive stamps of any different shape, size or pattern, bearing the words "Court Fees" which may hereafter be issued for use in supersession of, or in addition to, the adhesive stamps now in use.

II.—When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "Court Fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

III.—If in any case the amount of the fee chargeable under the said Act involves the fraction of an anna, such fraction shall be remitted.†

IV.—This notification shall take effect on and after the 1st June 1883. ‡

I. G. Notn., No. 1522, dated the 20th March 1885, Fin. and Com. Dept. ||

In exercise of the powers conferred by section 26 of the Court Fees Act, 1870, the Governor-General in Council directs that the additional Court-fee payable under section 19 E of the said Act on Probates and Letters of Administration shall be denoted either—

(a) by impressed and adhesive stamps in the manner prescribed in Notification No. 361 of the 18th April 1883; or

(b) wholly by adhesive stamps of the kind described in Clause I. of Notification No. 361 of the 18th April 1883.

I. G. Notn. No. 1494, S. B., dated the 29th March 1895, Fin. and Com. Dept.

In exercise of the power conferred by section 26 of the Court Fees Act VII. of 1870, and in supersession of so much of paragraph I. of the Notification in this Department No. 861, dated the 18th April 1883, as authorized the use of the adhesive stamps, bearing the words "Court Fees" in use on the date of the Notification for denoting the fee chargeable under the said Act,

* B. G. Notn., No. 3246, 25th April 1883 (B. G. G., 1883, Pt. I., p. 352).

† See I. G. Notn., No. 4650, 10th Sept. 1889, cl. (19), Appendix C, *post*.

‡ Subsequently postponed to the 1st July 1883 by Notification in the Gazette of India.

|| B. G. G., 1885, Pt. I., pp. 429-30.

when in any case the fee is less than Rs. 10, the Governor-General in Council is pleased to direct that in such cases the adhesive stamps to be used shall, with effect from the 1st July 1895, be adhesive stamps of the size and pattern introduced in 1888, bearing the words "Court Fees" and containing three lines in the middle, with the Queen's head and the value printed on the left side.

I. G. Notn., No. 230, dated the 20th April 1885.*

The following letter from the Government of India to the Government of Bombay is published for general information:—"I am directed to acknowledge the receipt of your letter No. 2729, dated the 31st March 1885, and to state that adhesive labels attached to impressed sheets of Court-fee stamps, in accordance with the directions contained in the Financial Notification No. 361, dated the 18th April 1883, should be regarded as impressed stamps for the purposes of the rules which regulate the refund of the value of impressed stamps."

I. G. Notn., No. 4070, S. R., dated the 23rd August 1895, Fin. and Com. Dept.

In exercise of the power conferred by section 26 of the Court Fees Act VII. of 1870, and in supersession of the Notification in this Department, No. 1678, dated the 18th July 1873, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act shall, with effect from the 1st September 1895, be denoted by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the Queen's head and the value printed on the left side, and the word "Service" over-printed on the stamps.

I. G. Notn., No. 3318, S. R., dated the 4th August 1896, Fin. and Com. Dept.

In exercise of the power conferred by section 26 of the Court Fees Act VII. of 1870 and in continuation of the Notification of the Government of India in the Finance and Commerce Department, Nos. 361 and 4070, S. R., dated the 18th April 1883, and the 23rd August 1895, respectively, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act may be denoted by adhesive stamps bearing the Queen's head in a circle in the centre and the value printed on each side thereof with the words "High Court Service."

RULES FOR THE SUPPLY, RENEWAL, AND KEEPING ACCOUNT OF STAMPS.

SECTION 27.

Rules framed under section 27 of Act VII. of 1870 for regulating:

- (1) *the supply of stamps to be used under the Act,*
- (2) *the number of stamps to be used for denoting any fee chargeable under the Act,*
- (3) *the renewal of damaged or spoiled stamps, and*
- (4) *the keeping of accounts of all stamps used under the Act.†*

1. Court Fees Stamps shall be supplied from the General Stamp Office in Bombay to Central Depôts on indents to be submitted in the Form A, attached to these rules, by Treasury officers or other officers in charge of Central Depôt.

2. Sub-Depôts shall be supplied with Court Fees Stamps from the Central Depôts to which they are subordinate, on monthly indents to be submitted to the Central Depôts in the Form B.

3. Each Central Depôt shall keep a supply of Court Fees Stamps equal to its own probable requirements for two months, in addition to what it is directed to keep for the Sub-Depôts.

* Reproduced in I. G. Resolution, No. 132, 11th Jan. 1888.

† B. G. G., 1873, pp. 1010-2 and B. G. G., 1874, p. 579.

4. Each Sub-Depôt shall keep a supply of Court Fees Stamps equal to its probable requirements for one month.

5. (*Superseded.*)

6. A Court Fees Stamp shall be held to be damaged or spoiled within the meaning of section 27, clause (c), when—

- (1) by any accident happening to the same it is rendered spoilt and unfit for use;
- (2) because of some error in the drawing or copying of any writing upon it, or to which it is affixed, the writing is rendered of no avail;
- (3) by reason of death or from any other cause, a transaction, which is intended to be effected by a writing duly stamped with the proper fee, is not completed, and the writing becomes of no avail;
- (4) the transaction intended by such writing to be effected has been effected by some other instrument on which the proper fee has been duly paid;
- (5) from any error or informality in the drawing up or in the signing of any writing on which the proper Court Fees Stamp has been duly affixed, and cancelled by any officer of any Judicial or Magisterial Court, or of any public officer duly appointed to perform the same, the writing is returned or rejected by the Court or public office to which it was sent or addressed, and the stamp has thereby become unfit for use.

In such cases, the owner may apply to the Collector of the district for renewal, and the Collector shall renew the stamp accordingly, provided he is satisfied of the sufficiency of the grounds of the applications.

The stamp shall be renewed by the supply, at the option of the applicant, either of one Court Fees Stamp or of two or more Court Fees Stamps in the aggregate of the same value as the spoiled stamp.

7. Accounts of issues and sales of Court Fees Stamps shall be kept at every Central Depôt in such form as may be required by the Local Government.

8. Each Sub-Depôt shall render to the Central Depôt to which it is subordinate a monthly return in Form C, showing the opening balance, the amount of stamps received, the total amount of stamps sold, and the amount of stamps in hand. Each of these items, except the last, should be tested at the Central Depôt, and the amount of stamps in hand should be certified by the head of the office.

9. The proceeds of sales at Sub-Depôts shall be credited to the nearest Treasury as realized, and incorporated each month in the receipts of the Central Depôt as if they had been there realized.

10. In order that there may be no discrepancies between the returns rendered by Collectors to the Superintendent of Stamps, and the actual receipts accruing from the sale of Court Fees Stamps in any month, the accounts and returns of these stamps kept in the Sub-Depôt shall be closed on the dates fixed for the closing of revenue monthly accounts in the Talukas, and the proceedings of the remaining days in the month shall be shown in the accounts and returns of the succeeding month as is done in the case of revenue accounts.

11. Each Central Depôt shall incorporate with its own returns of sales and balance the sales and balances at the Sub-Depôts subordinate to it, in the same way as if the stamps sold and balances retained at the Sub-Depôts had been sold and retained at the Central Depôt itself.

12. The Superintendent of Stamps shall keep an account of all receipts and issues of Court Fees Stamps in the form now in use, or in any other form which may be prescribed by the Local Government.

13. A monthly return of stamps issued to and returned from Central Depôts shall be furnished by the Superintendent of Stamps to the Accountant-General.

A.

Indent on the Superintendent of Stamps, Bombay, for Adhesive Court Fees Stamps.

I request that the undermentioned Adhesive Court Fees Stamps may be sent to me :—

1	2	3	4	5	6
Description.	Number in Store on date of Indent in Labels.	Number sold in the last six months in Labels.	Number Indented for in Labels.	Number passed by Superintendent in Labels.	Total Value.
					Rs. as. p.
One-anna Adhesive Court Fees Stamps					
Two do. do. do. ...					
Three do. do. do. ...					
Four do. do. do. ...					
Six do. do. do. ...					
Eight do. do. do. ...					
Twelve do. do. do. ...					
One Rupee do. do. ...					
Two do. do. do. ...					
(Value to be entered according to requirements.)					

(Name of Station)

(Date)

(Designation.)

B.

Indent on the Huesur Treasury of

for the undermentioned Adhesive Court Fees

Stamps required for the Sub-Depot of

Description.	Number in Sub-Depot on date of Indent in Labels.	Number sold during one month in Labels.	Number indented for in Labels.	Total Value.
				Rs. as. p.
One-Anna Adhesive Court Fees Stamps				
Two do. do. do. ...				
Three do. do. do. ...				
(Value to be entered according to requirements.)				

(Name of Station)

(Date)

(Designation.)

O.

Account of Sale and Stock of Adhesive Court Fees Stamps at the Sub-Depot of

18

for the month of

Value.	Rs. a. P.	
	Rs.	P.
1,000 Rupee Labels.		
700 Rupee Labels.		
400 Rupee Labels.		
200 Rupee Labels.		
100 Rupee Labels.		
70 Rupee Labels.		
40 Rupee Labels.		
20 Rupee Labels.		
10 Rupee Labels.		
7 Rupee Labels.		
5 Rupee Labels.		
4 Rupee Labels.		
2 Rupee Labels.		
1 Rupee Labels.		
12 Anna Labels.		
8 Anna Labels.		
6 Anna Labels.		
4 Anna Labels.		
3 Anna Labels.		
2 Anna Labels.		
1 Anna Labels.		
Stock in hand at the close of last month.		
Received from the Huzár Treasury of during the month ...		
Total ...		
Sold during the month ...		
Balance ...		

(Name of Station)

(Date)

(Designation.)

RULES FOR REGULATING THE NUMBER OF STAMPS TO BE USED.

SECTION 27 (b).

B. G. Notn., No. 3780, 25th April 1883 (B. G. G., 1883, Pt. I., p. 357).

The Government of India having in their Notification* in the Department of Finance and Commerce, No. 361, dated 18th April 1883, prescribed the use from 1st June 1883 of adhesive stamps for denoting Court Fees amounting to less than Rs. 10, His Excellency the Governor in Council is pleased in supersession of Government Notification, dated 13th April 1875, published at page 349 of the Bombay Government Gazette of the 15th idem, Part I., to lay down, under Section 27 (b) of the Court Fees Act, 1870, the following rules for regulating the number of stamps to be used for denoting any fee chargeable under the said Act:—†

I. When, in the case of fees amounting to less than Rs. 10, the amount can be denoted by a single adhesive stamp, such fee shall be denoted by a single adhesive stamp of the required value. But if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values, which may be required to make up the exact amount of the fee.‡

II. When in the case of fees amounting to or exceeding Rs. 10, the amount can be denoted by a single impressed stamp, the fee shall be denoted by a single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fractions of less than Rs. 10.

III. (a) Any adhesive stamps which may be used under Rule II. shall be affixed to the impressed stamp of the highest value employed in denoting the fee.

(b) When two or more impressed stamps are used to make up the amount of the fees chargeable under the Court Fees Act, a portion of the subject-matter shall be written on each impressed stamp so used and the writing on each stamp shall be attested by the signature of the person or persons executing the document.

(c) When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto as may be necessary for the complete writing of the document, and the writing on the impressed stamp and on the plain paper shall be attested by the signature of the person or persons executing the document.

CANCELLATION OF STAMPS.

SECTION 30.

I. G. Resolution, No. 1768, dated the 24th July 1873, Fin. Dept. §

The Governor-General in Council had recently had under consideration the best method of cancelling Adhesive Court Fee labels so that they may not be fraudulently used again.

* Republished under B. G. Notn., No. 3246, dated 25th April 1883.

† The same rules are in force in Madras (Notn. No. 76, 19th May 1883; Fort St. George Gazette, 1883, p. 322); North-Western Provinces (G. O., No. 128, 26th June 1883); and the Punjab (Notn. No. 101, 29th Nov. 1883; Punjab Gazette, 6th Dec. 1883, Pt. I., p. 743).

‡ An appeal was rejected by the District Judge as beyond time on the solitary ground that instead of affixing one label of the value of Rs. 3, he affixed two labels, one of the value of Rs. 2 and the other of Re. 1, and the certificate of the treasurer showing that when he presented the appeal no such Court-fee label was procurable was presented five days after the time allowed for appeal. Held, that the appeal should not have been dismissed; the circumstances of the case furnished ample ground for the exercise of the discretionary power conferred by s. 5 of the Limitation Act.—*Bansi Lal v. Rughunath Sahai* (W. N., 1887, p. 212).

§ B. G. Resolutions, No. 4436, 18th August 1873, and No. 7106, 13th Oct. 1883, J. D.

2. Under Act VII. of 1870, section 30, Court-fee labels are cancelled by punching out the figure head. But this does not perhaps afford sufficient protection, and pending further consideration of the subject, the Governor-General in Council directs that the Record keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first, and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.

I. G. Resolution, No. 3373, dated the 24th Sept. 1875, Fin. Dept. *

The Governor-General in Council observes that, under the provisions of the Court Fees Act, the cancellation of stamps must be effected by the Court or office receiving the document to which a stamp has been affixed.

2. His Excellency in Council is not satisfied that the rules at present in force provide adequate security for the stamp revenue in the case of labels affixed to certified copies of papers which are frequently only imperfectly obliterated by the Court issuing these documents.

3. In supersession, therefore, of existing orders on the subject, the Governor-General in Council is pleased to direct that the Court or office issuing copies, certificates or other similar documents liable to stamp-duty, shall, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure head nor that part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document, with the date, should be written across the label and upon the paper on either side of it, as is frequently done by persons signing stamped receipts.

I. G. Resolution, No. 3047, dated the 5th Sept. 1883, Fin. and Com. Dept. †

It was directed in Financial Resolution No. 1763, dated the 24th July 1873, that the Record keeper of every Court shall, when a case is decided, and the record consigned to his custody, punch a second hole in each label distinct from the first which is prescribed by section 30 of the Court Fees Act, and note the date of doing so at the same time.

These directions apply only to adhesive labels used under the Court Fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court Fees Act.

See also B. G. Resolution, No. 6641, dated the 8th Sept. 1883, R. D., *ante*, p. 70.

RULES FOR THE SALE OF STAMPS.

SECTION 34.

The following revised Rules framed under Section 48 of Act XVIII. of 1869 and Section 34 of Act VII. of 1870, by the Government of Bombay for the purpose of regulating the sale of Court Fees Stamps, for determining the person by whom such sale is to be conducted, and for fixing their remuneration, having been approved by the Governor-General of India in Council, are published for general information, in supersession of the Rules published at page 1809 of the *Bombay Government Gazette* of 11th December 1873 :—‡

1. The Office of the Superintendent of Stamps at Bombay shall be the Head Central Depôt for Court Fees Stamps.

2. Each Huzûr or Collector's Treasury shall be regarded as a Central Depôt. The Treasuries of Political Agents shall also be Central Depôts for the districts placed under their charge. Each Taluka and Mahâl Treasury shall be a Sub-depôt for Court Fees Stamp.

* B. G. Resolution, No. 6204, 20th Oct. 1875, J. D.

† B. G. Resolution, No. 7106, 13th Oct. 1883, J. D.

‡ B. G. G., 1874, Pt. I, pp. 690-1.

3. Court Fees Stamps will be sold at all Treasuries in the Bombay Presidency, and by such persons as may be licensed to sell stamps by the Collector or other officer empowered by the Local Government to grant licenses. The Treasurer of each Treasury, and any salaried persons as may be appointed by the Local Government, shall be *ex-officio* vendors of Court Fees Stamps.

4. *Ex-officio* vendors shall not be required, except in the Town of Bombay, to sell Court Fees Stamps of a lower value than 50 rupees each. Court Fees Stamps of lower values shall be sold by the licensed vendors.

5. Every license shall be revocable at any time by the Local Government, or by the authority who granted it. Every license shall specify the name of the licensee, the description of stamps which may be sold under the license, and the place of vend, and it shall be signed by the authority granting it. The license shall be in the form annexed to these Rules.

No licensed vendor shall sell any impressed Court Fee Stamps of the value of Fifty Rupees or upwards except under a license granted to him in this behalf with the express sanction of Government. Such sanction will only be granted when it is deemed necessary for the convenience of the Courts or of suitors.—B. G. Notn., No. 6563 of 1883 (B. G. G., 1883, Pt. I, p. 647).*

6. Court Fees Stamps shall be sold to the public for cash only. Licensed vendors of such stamps shall receive such a rate of discount as may be ordered by the Local Government, but not exceeding a rate of two rupees per cent, on all purchases of Court Fees Stamps from a Central or Sub-Depôt. Licensed vendors will be required to pay cash for Court Fees Stamps purchased by them. No discount shall be given on account of the purchase by a vendor of any stamp of 50 rupees or upwards in value.

7. Every licensed vendor shall have at all times posted in a conspicuous position outside his place of vend, a sign-board bearing the name of the vendor with the words "Licensed vendor of Court Fees Stamps," in English and in the vernacular of the district. He shall also have in the place of vend the Acts of the Legislature, and the Schedules referring to the stamps sold by him, together with these Rules in English and the vernacular, placed so that they can readily be seen and read by purchasers.

8. In the case of impressed stamps, every *ex-officio* or licensed vendor shall write, on the back of every such stamp which he sells, the date of sale, the name and residence of the purchaser, and the value of the stamp in full in words, and his own ordinary signature, at the same time he shall make corresponding entries in the register to be kept by him in the form prescribed in Rule 18. No such vendor shall knowingly make a false endorsement on the stamp sold, or a false entry in his register.†

9. Every licensed vendor of the Court Fees Stamps shall, without delay, deliver any stamp which he has in his possession for sale, on demand by any person tendering the price thereof.

* Memo. from the Remembrancer of Legal Affairs:—The rule does not require that a person who has to pay a Court Fee of Rs. 50 or upwards shall obtain all the impressed stamps or labels necessary to represent the fee from an *ex-officio* vendor or from a stamp-vendor holding a special license. And the rule was not, in my opinion, transgressed if the plaintiff, after having purchased an impressed paper of the value of Rs. 60 (the highest suitable value at the time obtainable) from the local *ex-officio* vendor, used, in order to make up the fee of Rs. 67-8-0, labels which he purchased either then expressly or at any previous time from a licensed stamp-vendor. Nor can it be said that the licensed stamp-vendor transgressed the rule if he sold labels to the plaintiff for Rs. 7-8-0 knowing that he intended to use them for the above purpose, because he was not bound to inquire what purpose the labels were to be put to. The rule merely prohibits the sale by a licensed stamp-vendor of any impressed Court-fee stamp of the value of Rs. 50, or upwards, except under a special license; and no such sale appears to have taken place. (G. R. No. 2821, 14th April 1886, R. D.)

† It appears that adhesive Court-fee stamps as well as impressed stamps used under the General Stamp Act or the Court Fees Act can legally be used by persons other than those whose names they bear as purchasers. See G. R. 7199, 9th September 1884, R. D.

10. No vendor shall sell any stamps the use of which has been ordered by a competent authority to be discontinued. On returning such stamps to the Depot within six months from the date of such order of discontinuation, he shall be entitled to receive back the value thereof, less any discount which may have been allowed.

11. Every vendor shall keep and render such account as may be prescribed by the Local Government, and shall allow the Collector of the district or any officer duly authorized by such Collector or by the Local Government, at any time, to inspect such account and the register which he is required to keep under Rule 8, and to examine the store of stamps in his possession.

12. Every vendor shall, at any time on the demand of the Collector or other officer duly authorized by the Local Government, deliver up all stamps remaining in his possession; and if such stamps have been paid for, shall receive back the value thereof, less any discount which may have been allowed.

13. The register required to be kept under Rule 8 shall be in the following form :—

Date.	Description of Stamp.	Value of Stamp.	Name of Purchaser.	Residence of Purchaser.

14. An *ex-officio* vendor of Court Fees Stamps may be required to give security for the proper performance of his duties, if such appear necessary to the head of the office in which the vend of the stamps is to be conducted. The terms of the bond can be specially framed to meet the requirements of the case.

(Annexure to Rule 5.)

The following is the form for the License indicated in Rule 5:—

No.

To

(Date)

License

You are hereby authorized to sell Court Fees Stamps of the following descriptions (that is to say):—(here insert description of stamps), at (here insert the number of the house and the name of the street, or Court, or district or locality, and the name of the Collectorate, wherein the stamps are to be sold) according to the Rules made under section 48 of the General Stamp Act of 1869, and section 34 of Act VII. of 1870.

(Signature of the Officer granting the License.)

Note.—This License is revocable at any time by the Government of Bombay or by the Officer granting it.

RULES FOR REFUND OF THE VALUE OF COURT-FEE STAMPS.

I. G. Resolution, No. 182, dated the 11th January 1888.*

In supersession of all existing orders on the subject, the Governor-General in Council is pleased to authorise the refund of the value of impressed Court-fee stamps and of Court-fee adhesive labels in accordance with the following rules:—

- 1 (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

* Quoted by the B. G. Resolution, No. 819, dated the 6th Feb. 1888, R. D.

- (b) When any person is possessed of two or more (or in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use,

the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered. Provided that Local Governments may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. The Local Governments may at their discretion delegate this power to any subordinate authority.

2. When a licensed vendor surrenders his license or dies, the Collector may, at his discretion, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the values of stamps and labels, not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fee labels their value may not be refunded nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other; and in cases where the value of each label is less than Rs. 5, unless there are at least four such labels which have never been detached from each other.

3. When adhesive labels are attached to impressed sheets of Court-fee stamps in accordance with the directions contained in Notification by the Government of India in this Department, No. 361, dated the 18th April 1883, such labels should be regarded as impressed stamps for the purposes of refund under these rules.

HIGH COURT RULES RELATING TO COURT-FEES TO BE OBSERVED IN THE APPELLATE SIDE, HIGH COURT.

The following rules relating to Court-Fees and the assessment of the fee payable on appeals shall be observed by the Sheristadar's Department:—

I. The stamps on all appeals, applications and other documents presented in this office shall be cancelled on the day of presentation.

I. A. The value of the claim in appeal shall be shown in the Memorandum of Appeal.

II. Whenever registration of any appeal or application is for any reason refused, a refund certificate shall be granted to the party or his pleader entitling him to receive back the value of the Court-fee stamps cancelled in this office in respect of such appeal or application and the copies therewith filed.

III. When the Court-fee paid on an appeal corresponds with the Court-fee paid and accepted in the Courts below, no further enquiry need be made, unless from the papers filed with the appeal it appear that the Court-fee has been assessed on a mistaken principle, and that a different stamp is required on the appeal.

IV. When the Court-fee on the appeal differs from that paid in the Court below, the difference must be fully accounted for in a foot-note to the memorandum of appeal and the Appellant's pleader must furnish all information necessary to explain it.

* B. G. G., 1884, Pt. I., p. 173; and 1887, Pt. I., p. 864.

V. If, after assessing in accordance with the preceding Rules the Court-fee payable, it appears that stamps of greater value than is required have been affixed to the appeal, a refund certificate for the excess shall after obtaining the order of the Taxing Officer, be granted, provided that no such certificate shall be granted under this rule for any sum less than two rupees in any one case.

VI. If the Sheristedar consider that an appeal or application is insufficiently stamped he shall inform the party or his pleader that the Court-fee is deficient, and such party or pleader shall intimate whether he will take back the appeal or pay the Court-fee, or whether he wishes the matter to be referred to the Taxing Officer. If no intimation is received within four days, the matter shall be referred to the Taxing Officer.

VII. If the party or pleader agrees to make good the deficiency of Court-fee, the additional Court-fee may be paid at any time before the evening of the thirtieth day from that on which the party or pleader was informed of the deficiency, or if on the thirtieth day the Court is closed, then before the evening of the next Court day.

VIII. If the matter be referred to the Taxing Officer, and it be found that there is a deficiency of Court-fee, the additional Court-fee may be paid at any time before the evening of the thirtieth day from the date of the final decision, or, if on the thirtieth day the Court is closed, then before the evening of the next Court day.

IX. If, in the case contemplated in Rules VII. and VIII. the deficiency of Court-fee be not made good within the time prescribed, or if for any cause registration be refused, the appeal or application shall, at the option of the party, or his pleader, be returned to him or recorded, subject to the result of any application that may be made to the Court.

X. Whenever a refund certificate is granted in respect of the whole or a part of any Court-fee stamp, a statement of the amount refunded shall be endorsed, under the signature of the Registrar, on the document to which such stamp is affixed.

Appendix C.

REDUCTIONS AND REMISSIONS OF DUTY.

SECTION 35.

I. G. Notn., No. 4650, 10th Sept. 1889 (I. G., 14th Sept. 1889, Pt. I., pp. 506-9).

Under section 35 of the Court Fees Act (VII. of 1870), and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely:—

A.—General for the whole of British India.

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement-operations;

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office:

(5) to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the Specific Relief Act (I. of 1877), shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule;*

(6) to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the Code of Civil Procedure, Act XIV. of 1882, shall be limited to the amounts chargeable under article 11 of the Second Schedule to the Court Fees Act, 1870;†

* See Sch I., Art. 2, *ante*, p. 77.

† This clause has been substituted for the original clause 6 by I.G. Notn., No. 4344, S. R., 6th Oct. 1893 (I. G., 7th Oct. 1893, Pt. I., p. 575).

The effect of the amendment is to limit the fee on appeals from orders under clause (c) only of section 244 of the Code of Civil Procedure to the amount chargeable under article 11 of the Second Schedule to the Court Fees Act (VII. of 1870), and to make appeals from orders under clauses (a) and (b) of the same section subject to *ad valorem* fees.—*Cal. H. C. G. L. No. 3 of 30th January, 1894.*

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executors;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India, and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

The exemption from duty continues as long as the copies are not presented to a public officer—who must, of course, refuse to accept them, unless and until they are stamped. It is a common practice to take copies "for private use" and stamp these later on, preparatory to filing them in Court. There is no objection to the practice. When copies, however, are issued free of duty, for private use, a note of the fact that they are so issued should be always enfaced by the public officer who furnishes them. He is bound by section 6 of the Court Fees Act to see that they

are stamped; and should, therefore, quote the exemption which authorizes him to let them pass without payment of duty.—*C. P. Stamp Manual*, 1898, p. 43, para. 19.

Although copies of documents on plain paper may be furnished by judicial officers to public departments, or to persons applying for such copies for their private use, such unstamped copies would not be admissible in any civil proceeding before a Court of Justice.—*Punj. Stamp Manual*, 1888, p. 68, para. 99.

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act (XIX. of 1888), or the Agriculturists' Loans Act (XII. of 1884);

(13) to remit the fee chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the Indian Stamp Act (I. of 1879),* for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution 2566, dated the 20th August 1885;

(15) to remit the fees chargeable on the following documents, namely:—

(a) copy of a charge framed under section 210† of the Code of Criminal Procedure, 1882, or a translation thereof, when the copy is given to an accused person;

(b) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219† of the said Code to an accused person;

(c) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371† of the said Code to an accused person;

* See now the second para. of s. 42 of the Indian Stamp Act II. of 1899.

† See now the same section of the Code of Criminal Procedure V. of 1898.

- (d) copy or translation of a judgment in a summons-case, when the accused person to whom the copy or translation is given under section 871* of the said Code is in jail;

With the exception of the depositions of the witnesses, and the documentary evidence and copies of final sentences or orders passed by criminal Courts, which, parties desirous of appealing from such sentence, are required, by s. 416 of the Code of Criminal Procedure, to file with their petition of appeal, when the party, who is desirous of appealing, is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same, copies of any part of the record of a criminal trial can only be furnished to

applicants on stamp-paper.—*Pro., July 26, 1869* (4 Mad. H. C., Ap., 57).

The exemption of the Government of India, dated the 19th September 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written.—*Pro., Jan. 5, 1871* (6 Mad. H. C., Ap., 12).

- (e) copy of an order of maintenance, when the copy is given under section 490* of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;
- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury, or of any order, deposition, or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but a copy which, on its being applied for under section 548* of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;
- (h) copies of all documents which any such advocate, pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any Government proceedings;
- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;
- (16) to direct that the fee chargeable—
- (a) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II. of 1886 (an Act for imposing a tax on income derived from sources other than agriculture), and
- (b) on a copy of an order passed under section 26 of the same Act, shall be limited to one anna;
- (17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;
- (18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;
- (19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

* See now the same section of the Code of Criminal Procedure V. of 1898.

(19 A) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;*

B.—Special for the Presidency of Fort St. George only.

(20) to direct that the fees chargeable on the following documents filed in claims preferred under Madras Regulation VI. of 1831 (*Hereditary Offices*) shall be limited to the amount specified against each, namely :—

Plaint or petition for execution	... eight annas;
Memorandum of appeal	... two rupees;

(21) to remit the fees chargeable on copies of judgments or decisions passed on claims preferred under Madras Regulation VI. of 1831 (*Hereditary Offices*);

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under Madras Act VIII. of 1865 (*An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*);

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint;

(23 A) to remit the fees chargeable under the said Act on applications made by toddy drawers and shop-keepers for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other palms. †

C.—Special for the Bombay Presidency only.

(24) to remit the fees chargeable under the Second Schedule on agreements required by Rule 75 of the rules made by the Governor of Bombay in Council under clause (i) of section 214 of the Bombay Land Revenue Code (Bombay Act V. of 1879);

(25)† to direct that the fee chargeable on a plaint presented under the Mamlatdars' Courts Act (Bombay Act III. of 1876) shall not exceed eight annas;

(26) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdars' Courts Act (Bombay Act III. of 1876);

(27) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue Officer, or to the Chief Controlling Revenue Authority, by any of the undermentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sirdars of note :—

District.	Number and Names of Pensioners.
Karachi... ..	1. Jam Murad Ali, son of Jam Mehr Ali, Jokia.
Hyderabad	1. His Highness Mir Hassan Ali Khan, son of Mir Nasir Khan, Talpur.
	2. His Highness Mir Nur Mahmud Khan, son of Mir Hassan Ali Khan, Talpur.
	3. His Highness Mir Fateh Khan, son of Mir Sher Mahmud Khan, Talpur.

* I. G. Notn., No. 4276, S. R., 23rd Sept. 1897 (B. G. Notn., No. 7196; B. G. G., 30th Sept. 1897, Pt. I., p. 1684).

† I. G. Notn., No. 2861, S. R., 15th June 1897.

‡ Clause (25) is superseded by the amendment made in article 4 of Sch. II. of the Court Fees Act, 1870, by Act XII. of 1891, Second Schedule.

District	Number and Names of Pensioners.
Shikarpur	<ol style="list-style-type: none"> 1. Mir Imam Baksh Khan, son of Mir Mahammad Hossein Khan. 2. Mir Walidad Khan, son of Mir Mahammad Hossein Khan. 3. Mir Ahmed Khan, son of Mir Mahammad Hossein Khan. 4. Mir Fazl Hassan Khan, son of Mir Soharb Khan. 5. 3rd Dehra of the late Mir Mahammad Hossein. 6. 1st Dehra of the late Mir Soharb Khan. 7. 2nd Dehra of the late Mir Soharb Khan. 8. Mir Najaf Ali Khan, Walad Mir Ali Akbar Khan. 9. Mir Abdul Kadir Khan, Walad Mir Ali Akbar Khan. 10. Mir Ali Madat Khan, son of Mir Nasir Khan. 11. Mir Ali Ahmed Khan, Walad Mir Nasir Khan. 12. Bibi Vilayat, 2nd Dehra of the late Mir Nasir Khan. 13. Chand Bibi, 3rd Dehra of the late Mir Nasir Khan. 14. Naz Bibi, 2nd Dehra of the late Mir Mahmad Ali Khan. 15. Mir Mubarak Khan, Walad Mir Wali Mahammad Khan. 16. Mir Gul Hassan Khan, Walad Mir Wali Mahammad Khan. 17. Mir Khan Mahammad Khan, Walad Mir Wali Mahammad Khan. 18. Mir Yar Mahammad Khan, Walad Mir Wali Mahammad Khan. 19. Bibi Chanaa, 1st Dehra of Mir Wali Mahammad Khan. 20. Mir Ali Baksh Khan, Walad Mir Fazl Mahammad Khan. 21. Mir Amir Baksh Khan, Walad Mir Fazl Mahammad Khan. 22. Mir Gulam Murtaza Khan, Walad Mir Chakar Khan. 23. Chief Dehra of the late Mir Ali Mahammad Khan. 24. 2nd Dehra of the late Mir Ali Mahammad Khan.

(28) to remit the fees chargeable on plaints under section 16 of the Dekkhan Agriculturists' Relief Act (XVII. of 1879), except in the District of Satara, where the said fees shall be reduced to one-half;

(29) to remit the fees chargeable in respect of the documents specified in the First and Second Schedule in the case of suits for the redemption of mortgaged property when the plaintiff, or where there are several plaintiffs, any one of the plaintiffs, is an agriculturist, and when such suits are instituted within the districts of the Bombay Presidency in which the Dekkhan Agriculturists' Relief Act (XVII. of 1879) is in force, except in the District of Satara, where the fees shall be reduced to one-half;

Agriculturist purchasing benami for a non-agriculturist.—Court-fee.—When the purchase is made by the real purchaser in the name of a benamidar to escape the effects which a purchase in his own name could involve him, the Court will look behind the record to see who the real purchaser is. The benamidar may maintain a suit in his own name but the Court will put the defendant in the same position as if the real were the actual plaintiff. Where, therefore, L purchased benami for K, a non-agriculturist, the interest of a mortgagor, and brought a suit as an agriculturist under the provisions of the Dekkhan Agriculturists' Relief Act for redemption and under the Notification of the Government of India, No. 2092, dated 29th July 1881, remitting the fees in the case of suits for the

redemption of mortgaged property when the plaintiff is an agriculturist, paid no stamp on the plaint. *Held*, that D is entitled to maintain the suit in his own name, but that he cannot be permitted to sue without payment of the usual Court-fees and to obtain the benefit resulting from the provisions of the Relief Act in favour of Agriculturists, and that the suit should be allowed to proceed as an ordinary suit as though K was the nominal as well as the real plaintiff.—*Dagdu bin Ganpati Nivair v. Balwant Ramchandras Natus* (F. J., 1897, p. 211).

No Court-fee is payable on an appeal by a non-agriculturist defendant in a redemption suit brought by an agriculturist.—*Lakshman v. Ramji* (F. J., 1883, p. 168).

(30) to remit the fees chargeable in respect of powers-of-attorney furnished to relatives, servants, or dependants under section 68 of the Dekkhan Agriculturists' Relief Act (XVII. of 1879);

(31) to remit the fees chargeable in respect of documents specified in the First or Second Schedule in the case of suits instituted before village-munsifs under Chapter V. of the Dekkhan Agriculturists' Relief Act (XVII. of 1879);

(32) to remit the fees chargeable in respect of proceedings taken under section 19, second clause, of the Dekkhan Agriculturists' Relief Act (XVII. of 1879);

(33) to remit the fees chargeable in respect of proceedings in matters relating to insolvency under Chapter IV. of the Dekkhan Agriculturists' Relief Act (XVII. of 1879);

(34) to reduce one-half of the fees chargeable in the case of suits to which Chapter II. of the Dekkhan Agriculturists' Relief Act (XVII. of 1879) applies, except suits of the description mentioned in section 3, clause (w) or clause (x), of that Act to which an agriculturist is not a party;

Provided that, when the reduced fee amounts to a fraction of an anna, the fee chargeable shall be one anna;

(35) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court in the Presidency of Bombay, or by the Sadr. Court in Sind, to a pleader appointed by the Court to defend a person accused of murder;

D.—Special for Bengal only.

(36) to remit in the Hill Tracts of Chittagong all the fees mentioned in the First and Second Schedules;

(37) to declare that the proper fee to be charged upon an application to deposit in any Court rent, not exceeding the sum of fifteen rupees, shall be as follows:—

	Proper fee.
If the amount deposited does not exceed Rs. 2-8-0 ...	One anna.
If the amount exceeds Rs. 2-8-0 but does not exceed Rs. 5 ...	Two annas.
If the amount exceeds Rs. 5 but does not exceed Rs. 10...	Four annas.
If the amount exceeds Rs. 10 but does not exceed Rs. 15 ...	Six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act VIII. of 1885;

E.—Special for the North-Western Provinces only.

(38) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement-record relating to any one village in Kumaon or Garhwal;

(39) to remit the fees chargeable on all documents filed, exhibited or recorded in, or received or furnished by, the Special Judge appointed under the Jhansi Encumbered Estates Act (XVI. of 1882);

(40) to remit the fees chargeable on all documents connected with the proceedings in Court of the Commissioner under the Jhansi Encumbered Estates Act (XVI. of 1882), except on memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI. of the said Act;

(41) to direct that the fee chargeable on any appeal against a decision of the Special Judge under Chapter VI. of the Jhansi Encumbered Estates Act (XVI. of 1882) shall not exceed eight annas;

F.—Special for the Punjab only.

(42) to remit the fees chargeable on copies of orders or proceedings under section 37 of the Punjab Land Revenue Act (XVII. of 1887), made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act;

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue officer engaged as aforesaid in revising a record-of-

rights, or to the Commissioner of the division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights there-to, or interests therein, if presented previous to the final confirmation of such revision;

(43) to remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act (XVII. of 1887), made by village-officers in accordance with the provisions of Rule 83 of the Rules under that Act published with the Notification of the Punjab Government No. 76, dated the 1st March 1888;

(43 A) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints in suits brought against British subjects by British subjects ordinarily residing outside British India,—

- (i) for the recovery of debts;
- (ii) appertaining to the custody of a woman, or
- (iii) appertaining to inheritance.

G.†—Special for Burma only.

(44) to remit the fees chargeable on the following documents furnished to cultivators namely:—

Certified copies of extracts from settlement or supplementary survey registers containing particulars of the holdings of cultivators;

(45) to remit the fees chargeable in Upper Burma on plaints, applications, petitions, and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi, or which are received or furnished by a Thugyi or Myothugyi:

Explanation.—For the purposes of this clause the expression “Thugyi or Myothugyi” includes any person, however designated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi;

Note.—For further special provisions affecting Lower Burma see K below.

I.—Special for Central Provinces only.

(47) to direct that the fee chargeable on a petition of objection to assessment under Act XIV. of 1867 (*An Act to provide for the assessment of the Pandhari-tax in certain parts of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna;

K. ‡—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, the Central Provinces, Ajmere and Coorg.

(48)† to direct that, whenever, upon payment of the full fee, a certificate of administration has been granted under Act XL. of 1858§ (*An Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*) or Act XX. of 1864§ (*An Act for making better provision for the care of the persons and property of minors in the Presidency of Bombay*), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.

(49)|| To direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine, the refund of which has been ordered by competent authority.

* I. G. Notn., No. 2807, S. R., 26th June 1896.

† Sub-division G (cls. 44 and 45) has been substituted for the original sub-divisions G (cls. 44 and 45) and H (cl. 46) by I. G. Notn., No. 4724, 22nd Oct. 1897 (B. G. Notn., No. 7888; B. G. G., 4th Nov. 1897, Pt. I., pp. 1889–4). The old cl. (44) was substantially the same as the new cl. (44), but it applied to Lower Burma only; cl. (45) also applied to Lower Burma only and remitted the fees chargeable on applications for advances under Rule 146 of the Rules framed under the Burma Land and Revenue Act (II. of 1876); cl. (46) was the same as the new cl. (45).

‡ Clause K (48) is obsolete.

§ Acts XL. of 1858 and XX. of 1864 were repealed by Act VIII. of 1890.

|| I. G. Notn., No. 3889, S. R., 6th Aug. 1896.

Appendix D.

SCHEDULE OF FEES UNDER ACT XXVI. OF 1867.*

Description of Instrument.	Proper Stamp-duty.	
	Rupees.	Annas.
Appeal—See Petition.		
Application—See Petition.		
1. Bond or other obligation, whether the money secured or to be ultimately recoverable thereupon shall be limited or unlimited, when given by the direction of any Court or revenue authority.	0	8
EXEMPTION.		
Bail-bonds in criminal cases, recognisances to prosecute or give evidence, and personal recognisances for appearance or otherwise.		
2. Certificate granted under Act XXVII. of 1860 (for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons), or under Regulation VIII. of 1827 of the Bombay Code (to provide for the formal recognition of Heirs, Executors, and Administrators, and for the appointment of Administrators and Managers of property by the Courts), or under Act. XL. of 1858 (for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal), if the debt or other property in respect to which the certificate is granted is sworn not to exceed 500 rupees in amount or value	5	0
If the property is sworn to exceed 500 rupees but not to exceed 1,000 rupees.	10	0
And for every additional 1,000 rupees, or fraction of 1,000 rupees	5	0
The person to whom any such certificate is granted under the said Act XXVII. of 1860, or his representative, shall, after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court which granted the certificate shall require him so to do, file a statement of all moneys recovered or realised by him under such certificate; and if the moneys so recovered or realised shall exceed the amount of the debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same, and order such person to take out a fresh certificate on the stamp prescribed by this Article for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.		
3. Copy of decree or order having the force of a decree—		
When passed by the High Court	4	0
When passed by any Civil Court other than a High Court or by any Revenue Court—		
If the decree or order purports to determine a claim of which the subject-matter is 50 rupees or less than 50 rupees in amount or value	0	8
If such amount or value exceeds 50 rupees.	1	0
4. Copy or translation of a judgment or order not being or having the force of a decree—		
When passed by the High Court	1	0
When passed by any Civil Court other than the High Court, or by any Revenue Court, or by the Board of Revenue, or by any Chief		

* Repealed by the present Court Fees Act VII. of 1870. This Schedule was substituted for Sch. B. to Act X. of 1862, by Act XXVI. of 1867, s. 6.

Description of Instrument.	Proper Stamp-duty.	
	Rupees	Annas.
Commissioner, or other chief revenue or executive authority, or by any Commissioner of Circuit, or any chief officer charged with the executive administration of a division—		
If the subject to which the judgment or order refers is 50 rupees or less than 50 rupees in amount or value	0	4
If such amount or value exceed 50 rupees... ..	0	8
5. Copy of any revenue or judicial proceeding or order not provided for in Articles 3 and 4, or copy of any account, statement, report, or the like, taken out of any Civil or Criminal Court, or any Revenue Court or office, or any office of any Commissioner of Circuit, or any chief officer charged with the executive administration of a division—per sheet	0	8
6. Copy of any deed, instrument, or writing stamped in accordance with Schedule A* annexed to this Act, when left by any party to a suit or proceeding in place of the original withdrawn.	The same stamp as the original, when such stamp does not exceed 8 annas, otherwise a stamp of 8 annas per sheet: Provided that the stamp duty on the copy shall never exceed the stamp duty on the original.	
EXEMPTION.		
Copy of any such deed, instrument, or writing, when the original does not require a stamp under the said Schedule A.		
7. Mukhtarnama, wakalatnama, and other power, filed or presented for the conduct of any one case in any Court, or before any revenue or executive authority—		
When presented to the High Court, the Board of Revenue, the Chief Commissioner, or other chief revenue or executive authority...	2	0
When presented to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division, or to a Commissioner of Customs, not being the chief revenue or executive authority	1	0
When presented to any Court, civil or criminal, other than the High Court, or to any Revenue Court, or to any Collector or Magistrate, or other revenue or executive officer, not being an authority already provided for by this Article... ..	0	8
EXEMPTIONS.		
Mukhtarnamas executed by an officer or soldier of the army.		
No advocate of any High Court shall be required to file or present a mukhtarnama or wakalatnama, or any other document empowering him to act.		
8. Petition of appeal not being from an order rejecting a plaint, or from a decree or order having the force of a decree—		
When presented to the High Court	2	0
When presented to any Civil Court other than the High Court, or to any Revenue Court other than the Board of Revenue	0	8
9. Petition of appeal when presented to the Board of Revenue, or to the Chief Commissioner, or other chief revenue or executive authority	2	0
10. Any other petition, and any application—		
When presented to the High Court	2	0
When presented to the Board of Revenue or to the Chief Commissioner, or other chief revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division	1	0

* Sch. A to Act X. of 1862 related to General Stamps.

Description of Instrument.	Proper Stamp-duty.	
	Rupees.	Annas.
When presented to any Criminal Court when the petition or application contains a complaint of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which police officers may arrest without warrant, as specified in column 8 of the Schedule annexed to the Code of Criminal Procedure	1	0
When presented to any Civil Court, other than a principal Civil Court of original jurisdiction, or to any Cantonment Joint Magistrate sitting as a Court of Civil Judicature under Act III. of 1859 (<i>for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates, and for constituting those officers registers of deeds</i>), or to any Court of Small Causes constituted under Act XI. of 1865 (<i>to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature</i>), or to a Collector or officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than 50 rupees	0	1
When presented to the Collector of Customs at any presidency town, to any Municipal Commissioner, or to any Magistrate or Justice of the Peace, under [Act XIV. of 1856], or any other Act for the time being in force for the conservancy and improvement of any presidency town	0	1
When presented to any Civil, Criminal, or Revenue Court, or any Board of Revenue, or any Commissioner of Revenue or Circuit, or any chief officer charged with the executive administration of a division for a copy or for a translation of any judgment, decree, or other document on record... ..	0	1
Petition or application not falling within any of the other provisions, or of the exemptions of this Schedule, presented to a Civil, Criminal, or Revenue Court, or to any Collector or other revenue authority, or any Magistrate in his executive capacity ...	0	8
EXEMPTIONS.		
A first application for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of any exhibit.		
Petition of appeal presented to a Magistrate against the <i>chaukidari</i> assessment.		
Petition to a Collector or officer making a settlement relating to matters connected with the assessment of lands, the ascertainment of rights, or to any other matter affecting the settlement of the Government revenue on land, if presented pending the formation of such settlement.		
Petition to a Board or Commissioner of Revenue relating to the same.		
Any application for permission, to cut timber in Government forests, or relating to such forests.		
Petition, application, charge, or information respecting any offence when presented, made, or laid before an officer of police, or before the heads of villages in the Presidency of Fort St. George, or before village police officers in the Presidency of Bombay.		
Any such petition, application, charge, or information presented, made, or laid before a Criminal Court, when such Court shall think that it ought to be exempted from stamp-duty.		
Petition from any prisoner, convict, or other person in duress, or under restraint of any Court or its officers.		
11. Plaint or Appeal , petition of, in suits and appeals not otherwise provided for, instituted in any Civil or Revenue Court outside the local limits of the ordinary original civil jurisdiction of the Courts established by Royal Charter for the recovery of any sum of money, or to obtain possession of any interest, matter, or thing—		

Description of Instrument.	Proper Stamp-duty.
If the amount or value of the property claimed does not exceed 10 rupees	Rupees. Annas. 1 0
If it exceeds 10 rupees and does not exceed 100 rupees	1 rupee <i>plus</i> 8 annas per 5 rupees or fraction of 5 rupees of the difference between 10 rupees and the amount or value sued for.
	<i>Illustration.</i>
	Where the amount or value is Rs. 82-8 the duty is Rs. 8-8.
If it exceeds 100 rupees and does not exceed 1,000 rupees... ..	1 rupee per 10 rupees or fraction of 10 rupees.
	<i>Illustration.</i>
	Where the amount or value is Rs. 485-8 the duty is 49 rupees.
If it exceeds 1,000 rupees and does not exceed 20,000 rupees	100 rupees <i>plus</i> 5 rupees per 100 rupees or fraction of 100 rupees of the difference between 1,000 rupees and the amount or value sued for.
	<i>Illustration.</i>
	Where the amount or value is Rs. 1,250-8 the duty is 115 rupees.
If it exceeds 20,000 rupees and does not exceed 1,00,000 rupees	1,050 rupees <i>plus</i> 1 rupee per 100 rupees or fraction of 100 rupees of the difference between 20,000 rupees and the amount or value sued for.
	<i>Illustration.</i>
	Where the amount or value is Rs. 43,450-8 the duty is 1,285 rupees.
If it exceeds 1,00,000 rupees	1,850 rupees <i>plus</i> 8 annas per 100 rupees or fraction of 100 rupees of the difference between 1,00,000 rupees and the amount or value sued for.
	<i>Illustration.</i>
	Where the amount or value is Rs. 5,98,150-8 the duty is 4,316 rupees.
If the suit be instituted in a Military Court of Requests, or in the Court of a Cantonment Joint Magistrate under the said Act III. of 1859, or in a Court of Small Causes established under Section 6 of Act XXII. of 1864 (<i>to make provision for the administration of Military Cantonments</i>), and the amount or value claimed does not exceed 8 rupees	Rupees. Annas. 0 4

Description of Instrument.	Proper Stamp-duty.
If it exceeds 8 rupees and does not exceed 16 rupees	Rupees. Annas. 0 8
If it exceeds 16 rupees and does not exceed 30 rupees	1 0
If it exceeds 30 rupees	The same stamp as for a suit in any other Court.

In suits for possession instituted under Section 15 Act XIV. of 1859, and applications for immediate possession under Section 1, Clause 2 of Act No. XVI. of 1838, and Act No. V. of 1864, passed by the Governor of Bombay in Council.

NOTE.—(a) In suits for immoveable property, whether paying or not paying revenue to Government, the amount of stamp duty payable shall be computed according to the market-value of the property in suit. In suits for immoveable property paying revenue to Government, where the settlement is temporary, eight times the revenue so payable, and where the settlement is permanent, ten times the revenue so payable, and in suits for immoveable property not paying revenue to Government, twenty times the annual net profits of such property shall be taken to be the market-value thereof, unless and until the contrary shall be proved.

A stamp of one-fourth the value prescribed in the foregoing scale.

SPECIAL RULES FOR THE BOMBAY PRESIDENCY.

(1) In the case of lands held on a settlement for a period not exceeding thirty years and paying the full assessment to Government, a sum equal to eight times the survey assessment shall be taken to be the market-value.

(2) In the case of lands held on a permanent settlement or on a settlement for any period exceeding thirty years and paying the full assessment to Government, a sum equal to ten times the survey assessment shall be taken to be the market-value.

(3) When the whole or any part of the annual survey assessment is remitted, the valuation calculated by the preceding rules shall be increased by ten times the portion of assessment remitted.

(b) In all other descriptions of suits the amount of stamp duty payable shall be computed in the following manner:—

(1) In suits for moveable property (other than money), according to the market-value of the subject-matter of the suit at the date of filing the plaint, or where the subject-matter has no market-value, as, for instance, in the case of documents relating to title or accounts, the amount at which the subject-matter shall be estimated in the petition of plaint or appeal.

(2) In suits (other than suits under Act No. XV. of 1865, or Act No. XXI. of 1866) in which it is not possible to estimate at a money-value the subject-matter of the suit

(3) In suits for money (including suits for damages and compensation), according to the amount claimed.

In order to ascertain the market-value or the annual net profits of any such property as is described in Norm (a) and in Norm (b), the Court may, either of its own motion, or on the application of any party to the suit, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court, and the decision of the Court as to the market-value or annual net profits shall be final. If in the result of any such investigation the Court shall find that the market-value or net profits has or have been erroneously estimated for the purpose of computing the stamp-duty, the Court shall either (as the case may be) refund the excess paid as such duty, or require the plaintiff to pay so much additional stamp-duty as would have been payable had the said market-value or net profits been correctly estimated, and in such case the suit shall be stayed until the additional duty shall have been paid.

Rupees.	Annas.
10	0

Description of Instrument.	Proper Stamp-duty.
<p>Section 180 of the Code of Civil Procedure shall be construed as if the words "the market-value of any property in suit or" were inserted after the word "ascertaining," and as if the words "or annual net profits" were inserted after the word "damages."</p> <p>(c) In suits for mesne profits or for immoveable property and mesne profits, if the profits decreed are in excess of the profits claimed, the decree shall not be executed until the difference between the stamp duty actually paid and the stamp duty which would have been payable had the suit comprised the whole of the profits so decreed, shall have been paid to the proper officer. Such difference shall be calculated by the Court according to the rules above mentioned, and shall be costs in the suit.</p> <p>(d) If an appeal or plaint, which shall have been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, shall be ordered to be received, or if a suit shall be remanded in appeal on any of the grounds mentioned in Section 351 of the same Code for second decision by the lower Court, the appellate Court shall grant to the appellant a certificate authorising him to receive back from the Collector the full amount of stamp-duty paid on the petition of appeal: Provided that if in the case of a remand in appeal the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much duty as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.</p> <p>(e) When any appeal shall be presented to a Civil Court not against the whole of a decision, but only against so much thereof as relates to a part or parts of the subject-matter of the suit, and on the hearing of such appeal the respondent shall take under Section 349 of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional stamp duty which would have been payable had the appeal comprised the part of the decision so objected to. Such additional stamp duty shall be calculated by the Court according to the rules above-mentioned, and shall be costs in the suit.</p> <p>GENERAL RULE.—If the subject-matter of any plaint, written statement, petition, or copy of a decree or order cannot be conveniently comprised within one stamp paper of the value prescribed by this Schedule, one or more additional pieces of paper may be used bearing a stamp of the value required for petitions. This rule does not apply to copies of judgments, and additional pieces of paper required for such copies need not be stamped.</p>	<p><i>Note.</i>—The Schedule enacted by Act XXVI. of 1867 is here substituted for the original Schedule B, which it has superseded.</p>

Appendix E.

QUESTIONS AND ANSWERS ON COURT-FEES.

1. Q. What is the procedure laid down by the Court Fees Act to be followed in a case of difference between the officer whose duty it is to see the fee paid, and any suitor or attorney?

A. See s. 5, *ante*, p. 5.

2. Q. How should Court-fees be calculated under Act VII. of 1870, on the following documents :—

(a) An application under s. 265 of the Indian Contract Act (IX. of 1872), and an appeal from an order made on such an application.

(b) A memorandum of appeal from an order under s. 831 of the Code of Civil Procedure.

(c) Separate appeals made by B and C against the decrees of a lower Court in a redemption suit which decrees awards to A possession of the property on his paying different sums of money to B and C separately. Cite cases in support of your answers.

A. (a) See *Bhogilal v. Popathhai* (7 Bom. 125), *Ehrakshah Dhanjishet v. Adarji Dorabji* (7 Bom. 535), *Abad Ali Pradhan v. Jamir-ud-din Mahomed* (18 C. L. R. 160) and *Ladubhai Premchand v. Revichand Venichand* (6 Bom. 143), *ante*, p. 28.

(b) See *Narayan Raghunath v. Bhagwant Anant* (10 Bom. 328; s. c., P. J., 1885, p. 258) and *Mahbubun v. Umrao Begum* (8 Cal. 720), *ante*, p. 75.

(c) See *Umarkhan v. Mahomedkhan* (10 Bom. 41), *ante*, p. 34.

3. Q. How is the stamp-duty calculated on the following plaints :—

(1) A borrows from B Rs. 3,000, Rs. 1,000 on the security of a field, and Rs. 2,000 on that of a house. A sues to recover the field, alleging that the Rs. 1,000 has been paid off.

(2) B (in the above case) sues to foreclose the mortgage as regards the house.

A. See s. 7, cl. IX., with notes, *ante*, pp. 16 and 83, respectively.

4. Q. What is the Court-fee payable in a suit to redeem an undivided half share of a field mortgaged for Rs. 1,000, and in respect of which interest on the mortgage has accumulated to the extent of another Rs. 1,000? The Subordinate Judge's Court allows redemption of only one-fourth share and the plaintiff appeals in respect of the one-fourth share of which redemption is not allowed. What fee should be borne by the appeal?

A. Under s. 7, cl. IX., the fee is to be calculated on the *principal* amount secured. See pp. 16 and 83, *ante*. As to the appeal see *Mahadaji v. Ballurishna* (P. J., 1882, p. 106), and *Vasudeva v. Madhava* (16 Mad. 326), *ante*, p. 34.

5. Q. (a) How should the claim in a suit for accounts be valued?

(b) A District Judge in appeal from the decree of the Subordinate Judge makes an order that the claim should be valued at a certain sum for the purpose of the Court-fee. What remedy is open to the party dissatisfied with the District Judge's order?

A. (a) See *Govindas v. Dayabhai* (9 Bom. 22), *ante*, p. 28.

(b) See s. 13, *ante*, p. 42, with notes.

6. Q. When are written statements, put in by defendants in a case, exempt from stamp-duty under the Court Fees Act?

Can you cite any decision in support of your answer?

A. See s. 19, cl. III., *ante*, p. 55. See *Nagu v. Yeknath* (5 Bom. 400), and *Cherag Ali v. Kadir Mahomed* (12 C. L. R. 387), *ante*, p. 57.

7. Q. In what suits is Court-fee leviable according to the amount at which relief sought is valued in the plaint?

A. See s. 7, cl. IV., *ante*, p. 14.

8. Q. When is an appeal allowed from the decision of questions as to valuation, and when not ?

A. See notes, *ante*, pp. 42-3.

9. Q. By whom and under what circumstances can a refund of Court-fees be allowed ?

A. See ss. 18, 14, 15 and 31 of the Indian Court Fees Act. See also notes under Sch. I, Arts. 13 and 14, *ante*, p. 83.

10. Q. What Court-fee is payable on—

(a) A suit for partition of a one-fifth share of property valued at Rs. 4,000 ;

(b) A suit for land assessed at Rs. 2-5-0 per annum with mesne-profits for three years at Rs. 27 per annum ;

(c) A written statement called for by the Court after first hearing ;

(d) A petition of appeal against a Municipal Tax.

(e) An application for leave to appeal as a pauper.

A. (a) See s. 7, cl. IV. (b), with notes, *ante*, pp. 14 and 21.

(b) See s. 7, cl. V., *ante*, pp. 14-5. See also notes, *ante*, pp. 41-2.

(c) See s. 19, cl. III., *ante*, p. 55.

(d) See s. 19, cl. XXI., *ante*, p. 56.

(e) See Sch. II., Art. 3, *ante*, p. 91.

11. Q. What provision does Act VII. of 1870 make for cases in which too low a Court-fee has been paid on a probate or letters of administration granted by a District Court ?

A. See s. 19 E, *ante*, p. 68.

12. Q. What processes may be served or executed free of charge ?

A. See Exceptions 2, 3 (note), 4 and 6, *ante*, p. 119. Also High Court Circulars, Nos. 112 and 113, *ante*, p. 120.

13. Q. What Court-fees paid by a complainant into a Criminal Court may the Court order the accused to repay to the complainant and how may the Court enforce its order ?

A. See s. 31, *ante*, p. 71.

14. Q. How should a plaint in a suit for a decree directing a document to be registered be stamped under the Court Fees Act ?

A. See *Jantoo v. Radha Canto Doss* (8 Cal. 515), *ante*, p. 96.

15. Q. A who has not been appointed to sell stamps of any kind, sells to B an adhesive stamp of the value of one anna to be affixed on an application for a copy under the Court Fees Act, 1870. Has A committed any offence ?

A. See s. 34 with notes, *ante*, pp. 72-3.

16. Q. How is the amount of the fee payable in the following suits and applications to be computed :—

(a) Suits for moveable property where the subject-matter has no market-value ;

(b) Suits for accounts ;

(c) Suits by a mortgagee to foreclose the mortgage ;

(d) Application by a tenant contesting his liability to be ejected from his holding ;

(e) Application by a tenant for the recovery of the occupancy of any land of which he has been wrongfully dispossessed.

A. (a) See s. 7, cl. IV. (a). (b) See s. 7, cl. IV. (f). (c) See s. 7, cl. IX. (d) See s. 7, cl. XI. (d). (e) See s. 7, cl. XI. (e).

17. Q. A sues B to set aside an attachment of land which is worth Rs. 5,000 ; the attachment being to secure a claim of Rs. 6,000. On what amount will Court-fees be payable in the suit to set aside the attachment ?

A. See s. 7, cl. VIII., *ante*, p. 15.

18. Q. A sues B for one year's annuity, payable during C's life. What shall be deemed to be the value of the subject-matter of the suit under the Court Fees Act?

A. See s. 7, cl. I., *ante*, p. 18.

19. Q. An executor pays probate duty on a landed estate estimated to be worth Rs. 20,000, and afterwards discovers that it is worth Rs. 30,000. What additional probate duty will be payable on the above estate in the two following events:—

(a) If the probate is produced for payment of extra duty within one year from the date of the grant?

(b) If produced after one year from the date of the grant?

A. See s. 19 E., *ante*, p. 68.

20. Q. How are Court-fees calculated or payable in the following cases:—

(a) Probate when the assets are valued at Rs. 800.

(b) Probate when the assets are valued at Rs. 5,000.

(c) On a plaint in respect of immoveable property paying a Government jumma of Rs. 300 per annum.

(d) On a plaint to recover possession of a house and land.

A. (a) and (b) See Sch. I., Art. 11, *ante*, p. 80. (c) and (d) See s. 7, cl. V., *ante*, pp. 14-5.

21. Q. Compute the proper Court-fees payable on a plaint claiming—

(a) Cancellation of an order rejecting an application for release of property worth Rs. 500.

(b) Declaration of right to such property.

(c) Damages amounting to Rs. 100 for wrongful attachment of the same property.

A. See notes, pp. 24 and 25, *ante*, and s. 7, cl. I., p. 13, *ante*.

22. Q. How are fees calculated on a claim filed in respect of (a) arrears of maintenance (b) future maintenance, and (c) redemption of mortgage.

A. (a) and (b) See s. 7, cls. I. and II. with notes, *ante*, pp. 13 and 19. (c) See s. 7, cl. IX., *ante*, p. 16.

23. Q. When can a suit for arrears of maintenance be brought on an *ad valorem* stamp according to the amount claimed?

A. When the party claiming arrears shall have previously obtained a decret fixing the rate of maintenance, or when the claim is based upon a written agreement. See also notes, *ante*, p. 19.

24. Q. How is the amount of fee payable on the following suits to be computed:—

(1) for maintenance?

(2) for moveable property other than money, having a marketable value?

A. See s. 7, cls. II. and III., *ante*, p. 13.

25. Q. What is the stamp-duty chargeable on an application by a witness for return of document filed by him in obedience to a summons?

A. No duty is chargeable. See *Anonymous Case* (15 W. R. 237), *ante*, p. 88. See also cl. 17, *ante*, p. 138.

26. Q. How is the amount of fee payable in (1) a suit for the possession of land, forming an entire estate, or a definite share of an estate, paying an annual revenue to Government, where the revenue is not permanently settled; and (2) in a similar suit where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed, to be computed?

A. See s. 7, cl. V. (b) and (d), *ante*, pp. 14-5.

27. Q. How is the fee on a memorandum of appeal against an order relating to compensation for land taken up for public purposes to be computed?

A. See s. 8 *ante*, p. 37.

28. Q. What is the rule as to calculating the fees on multifarious suits,—that is, suits embracing two or more distinct subjects?

A. See s. 17, *ante*, p. 52.

29. Q. How are fees under the Court-Fees Act to be collected?

A. See s. 25, *ante*, p. 66.

30. Q. What is the amount of fee payable on an application or petition presented to any Civil, Criminal, or Revenue Court for the purpose of obtaining copy of any Judgment?

A. See Sch. II., Art. 1 (a), last para., *ante*, p. 87.

31. Q. What is the exception to the rule, that a document for which a proper fee has not been paid cannot be filed in any Court?

A. See s. 33, *ante*, p. 72.

32. Q. What are the provisions of the Act as to repayment of fees paid on petitions to Criminal Courts? And how are fees ordered to be repaid to be recovered?

A. See ss. 18 and 31, *ante*, pp. 55 and 77, respectively.

33. Q. How is the amount of fee payable on the following suits to be computed:—(1) In suits to redeem; and (2) in suits to foreclose?

A. See s. 7, cl. IX., *ante*, p. 16.

34. Q. What is the amount of fee payable on (1) a plaint in a suit to establish a right of occupancy? (2) a plaint in a suit to obtain possession of a wife?

A. See Sch. II., Arts. 5 and 15, *ante*, pp. 91 and 94, respectively.

35. Q. What is the procedure to be followed in suits for mesne-profits or account, when the amount decreed exceeds the amount claimed?

A. See s. 11, *ante*, p. 40.

36. Q. How is the amount of fee payable on the following suits to be computed:—

- (1) In suits for money;
- (2) to enforce a right to share in joint family property;
- (3) in a suit for an injunction?

A. See s. 7, cls. I. and IV. (b) and (f), *ante*, pp. 13-4.

37. Q. With whom does the decision of questions of valuation of fee chargeable on a plaint presented to a Court other than a High Court or Presidency Small Cause Court rest?

A. See s. 12, *ante*, p. 42.

38. Q. What is the fee to be paid on an application for—

- (1) leave to sue as a pauper;
- (2) leave to appeal as a pauper—(a) when presented to a District Court, (b) when presented to a High Court;
- (3) on a caveat?

A. See Sch. II., Arts. 2, 3 and 12, *ante*, pp. 91 and 94, respectively.

39. Q. How is the amount of fee payable on the following suits to be computed:—

- (1) In suits to enforce a right of pre-emption;
- (2) In suits for the interest of an assignee of land-revenue; and
- (3) In suits to set aside an attachment.

A. See s. 7, cls. VI., VII., and VIII., *ante*, p. 15.

40. Q. What is the stamp-duty chargeable on a memorandum of appeal, when the appeal is not from an order rejecting a plaint, or from a decree or an order having the force of a decree and is presented (1) to any Civil Court other than a High Court, and (2) to a High Court?

A. See Sch. II., Art. 11, *ante*, p. 93.

41. Q. What is the fee to be paid on a plaint or memorandum of appeal in each of the following suits:—

(1) To alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;

(2) To set aside an award;

(3) To suits where it is not possible to estimate at a money value the subject-matter of dispute and which is not otherwise provided for by the Court Fee Act.

A. See Sch. II., Art. 17, cls. ii, iv, and vi, *ante*, p. 94.

42. Q. What is the Court-fee payable in the following cases:—

(1) A suit brought by A for a declaration that a decree obtained against his father is not binding on him;

(2) A suit for redemption in which the plaintiff alleges in his plaint that nothing is due on the mortgage;

(3) A suit to raise an attachment and award possession.

A. (1) See Sch. II., Art. 17 (iii), *ante*, p. 94.

(2) See s. 7, cl. IX., *ante*, p. 16, and *Eacharan Patter v. Appu Patter* (19 Mad. 16) and *Maruti v. Shripati* (P. J., 1889, p. 58), *ante*, p. 34.

(3) See *Dhondo v. Govind* (9 Bom. 20), and *Bhasker v. Shitaram* (P. J., 1887, p. 36) *ante*, p. 95.

43. Q. What Court-fee is payable for the following suits and appeals:—

(1) An application to the District Court, under s. 265 of the Contract Act to wind up a partnership? And also for an appeal from an order made by a District Judge in such a case;

(2) A suit for an account

(3) A suit for redemption of part of a mortgage.

(4) A suit under s. 335 of the Code of Civil Procedure.

(5) A suit for specific performance of a contract of guarantee, when the property—the subject of the guarantee is not within the jurisdiction of the Court.

(6) A suit for a declaration that the Plaintiff is entitled to the exclusive management of a certain *Devasthan* property and for an injunction.

A. (1) See notes, *ante*, p. 28.

(2) See s. 7, cl. IV. (f), *ante*, p. 14.

(3) See notes, *ante*, p. 34.

(4) See *Narayan v. Bhagwant* (10 Bom. 238), *ante*, p. 75. It seems there should not be any difference when the suit is under s. 335 of the Code of Civil Procedure.

(5) In such a suit the relief claimed would be declaration and injunction, all operating *in personam*. See s. 7, cl. IV. (c), of the Court Fees Act. Compare *Chunibhai v. The Secretary of State for India in Council* (P. J., 1890, p. 304), *ante*, p. 19.

(6) See *Raghunath Ganesh v. Gangadhar Bhikaji* (10 Bom. 60), *ante*, p. 26.

44. Q. Name the documents which are exempted from the payment of any Court-fee by the Court Fees Act.

A. See s. 19, *ante*, pp. 55-7.

45. Q. What Court-fee is payable for the following suits and appeals:—

(1) A suit for an account and dissolution of partnership, plaintiff estimating his share of the net profits at Rs. 1000.

(2) A suit to recover a moiety of an inam village yielding a yearly income of Rs. 2,000.

(3) A suit for a declaration of title and for an injunction.

(4) Cross appeals against a decree in a redemption suit where both mortgagor and mortgagee dispute the correctness of the amount ordered to be paid on account of the mortgage debt.

A. (1) See notes, *ante*, p. 28.

(2) See notes, *ante*, pp. 21 and 81; also *Venkataswami Nayakkan v. Subba Rao* (2 Mad. H. C., A. C., 1), *ante*, p. 29.

(8) See notes, *ante*, p. 26.

(4) See *Pirbhu Narain v. Sita Ram* (13 All. 94), *ante*, p. 35.

46. Q. (a) What documents are exempted from the payment of Court-fees under Act. VII. of 1870? (b) State the rule for computing the Court-fee for suits for possession of lands in the Bombay Presidency; and also those for the refund of the Court-fees.

A. (a) See s. 19 and Appendix C, *ante*, pp. 55 and 136, respectively. S. 4 omits documents to be filed, &c., in the High Courts in the exercise of their Ordinary Civil and Criminal Jurisdiction.

(b) See ss. 7 (V.), 10, 13, 14, 15, 19 A, 19 B and 19 C of the Indian Court Fees Act, 1870.

47. Q. What Court-fee is chargeable for the following suits and appeals:—

(1) A suit by a mortgagee for possession of the mortgaged property.

(2) A suit for an injunction with a declaration of right.

(3) A suit for an account.

(4) An appeal in a redemption suit, wherein the mortgagee admits the mortgage, but the dispute between the parties is regarding the amount awarded by the Lower Court for the redemption of the mortgage.

(5) An appeal presented by different defendants separately against the whole decree.

A. (1) See s. 7, cl. V., *ante*, p. 14.

(2) See notes, *ante*, p. 26.

(3) See s. 7, cl. IV. (f), *ante*, p. 14.

(4) See *Pirbhu Narain v. Sitaram* (13 All. 94) and *Faki v. Mana* (P. J., 1883, p. 39), *ante*, p. 35.

(5) See *Umarkhan v. Mahomedkhan* (10 Bom. 41), *ante*, p. 34.

48. Q. State what Court-fee is payable in respect of the following suits:—

(1) A suit (a) for possession of an inam village yielding a yearly income of Rs. 1,000, in respect of which the inamdar has to pay a summary settlement of 4 as. in the rupee and (b) for mesne profits from date of suit up to delivery of possession.

(2) A suit for an account of partnership and for an injunction.

(3) A suit for redemption of a mortgage.

A. (1) (a) See s. 7, cl. V. *ante*, p. 14. (b) See s. 11, *ante*, p. 40.

(2) See s. 7, cl. IV. (f) and (d), *ante*, p. 14.

(3) See s. 7, cl. IX., *ante*, p. 16.

49. Q. How are Court-fees to be calculated for a plaint in a suit for possession of lands and houses? Is a man entitled to value an account suit at one rupee and pay Court-fees accordingly when the Court is told that he expects to have a decree for Rs. 10,000 after the accounts are taken? What will be the Court-fees valuation of a suit for redemption of a house worth Rs. 2,000 but mortgaged for Rs. 50 only? Will it make any difference if the defendant and his written statement alleges that the mortgage-debt and interest payable to him will amount to Rs. 1,000 when accounts are taken?

A. See s. 7, cl. V., *ante*, p. 14.

See *Govindas v. Dayabhai* (9 Bom. 22), and *Balwantrao v. Bhimashankar* (13 Bom. 517) *ante*, p. 28. According to s. 7, cl. IX., the principal money (i.e., Rs. 50) secured is the test for valuation. Interest is not to be taken into account. See notes, *ante*, pp. 33-4.

50. Q. How are the following suits and appeals to be valued:—

1. (a) A suit to recover money by sale of the mortgaged property, and (b) a suit to foreclose the mortgage.

2. (a) A enters into an agreement with B for the sale of a certain immovable property for Rs. 1200 in possession of a tenant. B desires to enforce the agreement by a suit. (b) A sells a certain immovable property in his possession to B for Rs. 1200, and executes a conveyance in favour of B. B desires to enforce the contract by a suit for recovery of possession.

3. A plaint or memo. of appeal to recover possession of a wife.

4. An appeal by a claimant (a) for compensation under the Land Acquisition Act, and (b) by one of such claimants for an apportionment of such compensation.

A. 1 (a) This is a suit for money under s. 7, cl. I., of the Court Fees Act. (b) See s. 7, cl. IX, of the Court Fees Act.

2. (a) See s. 7 cl. X., *ante*, p. 16. (b) see s. 7, cl. V., *ante*, p. 14.

3. See Sch. II., Art. 15, *ante*, p. 94.

4. (a) See s. 8, *ante*, p. 37. (b) Apportionment suit would be one for money under s. 7, cl. I., of the Court Fees Act.

51. Q. (a) Is there any finality to the decision by a Court as to the valuation of a suit? If so, how, and to what extent?

(b) In what cases is a refund of Court-fees allowed when a suit is remanded by an Appellate Court for a fresh decision?

A. (a) See s. 12 with notes, *ante*, p. 42. (b) See s. 13, *ante*, p. 48.

52. Q. What are the special provisions of the Court Fees Act as to the valuation of land and as to petitions to village officers in this (Bombay) Presidency?

A. See s. 7, cl. V., and s. 19, cl. XVI., *ante*, pp. 14 and 56, respectively.

53. Q. A party who has made an objection to the attachment of property in execution of a decree, failing to establish it, brings a suit to establish his right to the property attached and claims possession. What is the proper stamp on his plaint?

A. See *Dhondo Sakharam v. Govind Babaji* (9 Bom. 20), *ante*, p. 95.

54. Q. A plaintiff obtains a decree for possession of land with mesne-profits from the date of suit until delivery of possession. The decree directs that such mesne profits should be determined in execution, which is done. Can the plaintiff proceed to execute the decree for the mesne profits without paying the Court-fee on the amount awarded in execution?

A. See s. 11, *ante*, p. 40.

55. Q. A sues B to recover possession of a house which he says is worth only Rs. 50 and values his claim at that amount. He alleges in the plaint that he has let the house to B on a lease for ten years, but that the defendant B has forfeited his rights under the said lease on account of non-payment of rent. He the plaintiff, adds an alternative prayer that in case the Court holds that the plaintiff cannot recover possession before the expiration of ten years, it should make a declaration in his favour that he is entitled to recover possession on the determination of that period. He fixes a Court-fee stamp of ten rupees to the plaint, but the Court demands from him an additional Court-fee stamp of three rupees and twelve annas, Is this order correct? Give reasons and authorities.

A. See *Kashinath v. Govinda* (15 Bom. 82), *ante*, p. 52.

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